UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 20-11218 (MFW)
THE HERTZ CORPORATION, *et al.*,	.	
	.	Courtroom No. 3
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	April 21, 2021
. . . . .	.	11:30 A.M.

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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MATTERS GOING FORWARD:

1. Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving Form, Manner, and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, and (VI) Granting Related Relief [Docket No. 3496 – filed March 29, 2021

2. Debtors' Motion for Entry of an Order (I) Authorizing Entry Into Equity Purchase and Commitment Agreement, (II) Allowing the HHN Notes Guarantee Claims, and (III) Authorizing the Debtors to Grant the HHN Notes Guarantee Confirmations [Docket No. 3497 – filed March 29, 2021]

3. Debtors' Motion for Entry of an Order (I) Approving Rights Offering Procedures and Related Materials, (II) Authorizing Debtors to Conduct Rights Offering in Connection with Debtors' Plan of Reorganization, and (III) Granting Related Relief [Docket No. 3498 – filed March 30, 2021]

Ruling: 118

DEBTORS' WITNESS(s):

WILLIAM DERROUGH

EXHIBITS:	ID	Rec'd
Declarations of William Derrough		44

(Proceedings commenced at 11:30 a.m.)

THE COURT: All right, good morning. This is Judge Walrath and we're here in the Hertz case. So I will turn this over to counsel for the debtor.

MR. HAYWOOD: Good morning, Your Honor. For the record, Brett Haywood of Richards, Layton on behalf of the debtors. I won't delay things and I will turn things over to our co-counsel, White & Case, for the debtors' continued disclosure statement.

THE COURT: Thank you.

MR. LAURIA: Good morning, Your Honor, Tom Lauria with White & Case, counsel for the debtors. I'm here joined this morning by a number of colleagues, including Aaron Colodny and Ron Gorsich, and Rob Kampfner, who will be here to talk about disclosure statement modifications and issues.

I also have Jason Zakia, who will be presenting evidence with respect to the equity purchase and commitment agreement; and my partner Rob Kampfner will also be available to address issues and questions the Court has with respect to the equity purchase and commitment agreement.

Let me start by saying that we apologize to the Court for the late filing of a big pile of paper. The magnitude of the pages is really not reflective of the quantum of the changes, however, that have been made.

We have been engaged in negotiations with the

existing plan sponsorship group and the ad hoc bondholder committee, and we have been able to procure, with their cooperation and support, what I think are two important modifications to the plan, and the language around those modifications was finalized only a few moments before the start of today's hearing.

So we have filed amended documents reflecting those changes, which I'll describe to the Court in due course here. We also have as a consequence to the changes agreed to certain amendments to the official committee's joinder to the plan support agreement to procure the committee's support for the existing plan.

All of these things have resulted in the late filings and, as I'm sure the Court can appreciate, there are literally hundreds of eyes that have had to go through the papers and review and approve them, and think about them and comment back and forth before we had them in a condition where we were able to file them, but I think that the substance of the changes is relatively limited. There may be an objection from the ad hoc group of equity holders to the disclosure statement, I'm not sure; I guess we'll find that out in due course.

But what we'd like to do is move forward with seeking approval of the disclosure statement, the solicitation procedures, the rights offering procedures, and

the timeline for voting, objecting, and having a confirmation hearing, if the Court is okay with that, and then we would turn to the motion for approval of the equity purchase and commitment agreement secondarily where we will have some testimony.

THE COURT: All right, that's good as a procedure.

MR. LAURIA: All right. Thank you very much.

So let me turn to the substance of where we are. As the Court was made aware last week, we are in fact in a position where we have a definitive, fully-documented, committed transaction to fund the company's exit from Chapter 11 that un-impairs all of our senior creditors and that enjoys the support of 87 percent of the funded debt unsecured creditors in the case, and continues to enjoy the support of the creditors committee.

At the same time, we have also received correspondence from the original plan sponsorship group, now joined by some additional investors, for an alternative proposal. The board has taken the time that the Court gave us last week to review those alternative materials, which in fact have changed over time since we were here on Friday, and has determined two things -- really three things, sorry.

Number one, the board determined that the proposal received constituted a bona fide expression of interest under our plan support agreement. That means that we were

authorized and directed to go engage with the proponents of the alternative proposal to make sure that we understand it, to ask questions and to get clarification, which we did over the weekend. Subsequently, that proposal was modified, but before it was modified the board made a further determination that the proposal in its existing state, principally because it was incomplete in a number of respects, did not at that time constitute a superior proposal.

Having gotten a revised version of the proposal yesterday and having had yet another board meeting yesterday afternoon, the board determined that the revised proposal could lead to a superior proposal and that the failure to pursue it could result in -- could be reasonably expected to result in a claim of breach of fiduciary duty against the board if we fail to pursue it. So, on that basis, the board resolved that we should proceed and engage and pursue the alternative proposal to see if we can develop it into a superior proposal.

With that said, we still face significant timing constraints with respect to the existing proposal. And the issues under consideration are really the following.

Number one -- and I think we'll present evidence on this in connection with the request to approve the EPCA we have a need for financing to come in to Europe in advance of when we would anticipate being able to consummate the

debtors' Chapter 11 plan. The financing need is for approximately $300 million, 250 million Euros. It would go into the parent, Hertz International Licensing, and that funding could then be transferred to OEMs in connection with orders that are placed for the purchase of the vehicles that would be funded with additional debt coming out of our European ABS financing. We need to begin placing those orders before the end of the month of April, so that we can start receiving vehicles before the end of June -- in May and before the end of June.

So that financing was contingent upon getting through today's hearing and getting both the disclosure statement and the EPCA approved. So that's one important timing consideration.

The second issue is our desire to exit Chapter 11 by the end of the second quarter. And, again, there will be testimony on this in connection with the request to approve the EPCA, but the highlights for the Court are as follows.

Number one, we are in a very difficult position where at this time, because of the semiconductor shortage that I'm sure the Court has read about, it's become very difficult to acquire new vehicles from the car manufacturers. And a secondary issue is there are some car manufacturers who just won't take orders from Hertz because we're in Chapter 11. So we need to be in position to have the access to that

market as soon as it opens up. And we don't know when it's going to open up, but we need to be in a position where as soon as we can begin placing orders for new vehicles we can do so and be able to access the full car market to fulfill the company's needs going forward.

The ABS that we currently have, the financing that this Court approved, HVIS, as we call it, a $4 billion facility, is financing to permit us to buy cars for 2021, which we have been doing and have done as best we can under the current circumstances, but we really need the new exit ABS to be in a position to buy cars for 2022 and following that for 2023. And so the only way we're going to have the money and the access to the market is to be out of Chapter 11 as quickly as possible.

So we've kind of all circled June 30th as the exit date. And, you know, as the Court knows, there's time that's required to go through the steps to be able to actually consummate a plan on a target date. And, you know, kind of working backwards, we think of June 10th as an ideal time to have a confirmation hearing, we think of June 1st as an ideal end to the solicitation period and the objection deadline and, to achieve that, we really have to have our solicitation launched by April 30th or May 1st for there to be adequate time for the ballots to get out, for people to consider them, and to vote within the time frame contemplated by the code

and rules.

So we're sitting here today on the 21st and we're (indiscernible) that we are pushing right up against the edge of our ability to properly get the solicitation materials, the ballots and related materials put together, and get them out and delivered so that the solicitation can in fact be commenced by the end of the month or at the latest May 1st, so that we can properly have our June 1 and June 10th target dates, if the Court determines that those are appropriate.

As the timeline slides back, we lose the cushion that we have in that timeline very rapidly to the point where we may well miss our target, which the problem that that presents is that the upside value that everybody sees here is really a function of the company's ability to meet its business plan projections in 2022 and '23. That depends on having a properly sized and aged fleet in those two years. And if we can't get into the market promptly this summer to buy vehicles, we create a significant risk that we won't -- that we'll have a fleet that quite frankly is too small and too old in 2022, and that will probably roll into 2023, and so you will see a denigration in the company's performance and all of the upside that people are so excited about could be lost or at least impaired.

So timing is pushing us to move forward quickly even though we are currently entertaining an alternative

proposal that the board has determined could lead to a superior proposal. So what we've tried to do is come up with an approach where we can have our cake and eat it too, where our stakeholders have their cake and eat it too, where the company can have its cake and eat it too, and where the Court can as well.

And what we're proposing to do is to borrow a page from what this Court did in the Corner Stores case a little less than two years ago. We're faced with similar circumstances where a debtor had a deadline and a target for exit but at the same time was continuing to entertain an alternative proposal. There the Court determined that the debtor could use Bankruptcy Rule 3019 to be able to pivot to an alternative sponsor and to make other modifications to the plan as may be required, as long as those changes did not result in an adverse impact on any voting class and that all of the changes in fact, as would be the case here, actually improved the treatment of voting class.

And so we think that that's a mechanic with proper disclosure and disclosure statement, which we have now drafted and proposed, to be able to move forward on what is in effect two paths, a path that is consistent with the company's need to maximize value by exiting in a timely fashion and to continue the discussions with the alternative plan proponents to see if we can get them to a superior

proposal and, if we do, to be able to pivot that alternative proposal to drop them into the existing timeline and to not lose the opportunity to exit in a timely fashion.

So what are the modifications that we now propose to make? There are really two. Number one, we have agreed with the plan sponsors and the bondholder group and the official committee that the cap on the cash distribution to the class of general unsecured claims will be increased from 440 million to $550 million. The importance of that number is that it is consistent with the debtors' good faith estimate of the total amount of claims it expects to be allowed in that class. Our current estimate is $547 million and that number includes some cushion around certain disputed and contested claims that gets us comfortable in believing in good faith that 547 is a good number, which means that the 550 cap will get the holders of claims in that class a full-par, 100 percent cash payment.

And the committee's advisers have had an opportunity to again engage with our financial advisers and with FTI to go through our analysis of the claims and to I think get comfortable that at this point the debtors' estimate is in fact a good faith estimate of the claims. So we've up that cap to 550 to get to what we believe is a full cash payout to the general unsecured claims.

The second change that we have made in the plan is

with respect to the treatment of equity. The plan previously provided that equity would get nothing and be deemed to have rejected the plan. The revision that we have negotiated here, again, with the plan sponsorship group and the ad hoc bondholders, is that instead all shareholders, large and small, whether or not their QIBs or non-QIBs, will receive their pro rata share of new six-year warrants to purchase four percent of the company's common equity, exercisable at a $6.1 billion total enterprise value. That TEV is reflective of what would be required to pay the unsecured debt in full, post-petition accrued interest at the contract rate, and the make-whole obligations associated with those obligations.

This will convert the equity class into a voting class, which -- so we will add the shareholders to the solicitation, and we estimate that the value of the recovery that this warrant package will provide to our shareholders is somewhere on the order of 90 to $100 million, based on the (indiscernible) analysis being performed by our financial adviser Moelis. This equates to a recovery -- we have about 150 million outstanding shares, it equates to a recovery of 60 to 70 cents per share, which we think is important and a significant milestone to achieve in this case; where we now have our general unsecured creditors getting a hundred cent recovery; we have our unsecured funded debt receiving a recovery that they have committed to accept, 87 percent of

the holders of that debt remain bound by the PSA to support the plan; and everybody else is un-impaired.

So this we think is an extraordinary opportunity both for the company, as I explained at our last hearing, in terms of the financial metrics would have at exit, and for our stakeholders to achieve an outcome that certainly at the beginning of the case, but even a couple of months ago, I don't think anybody really saw in their radar.

So the related modifications that we are making to the plan and disclosure statement, first of all, reflect these two changes, and also will reflect our commitment to continue to working with the alternative transaction, subject to the confines and compliance with our obligations of our plan support agreement, but also in furtherance and fulfillment of our fiduciary duties to get the best transaction we can and to maximize value for all of our stakeholders, so that we can at the end of the day stand before the Court and assure the Court we properly fulfill those duties and should be entitled to confirmation of the plan.

I should also mention that we agreed to a modification of the PSA joinder with the committee, pursuant to which the committee will continue to support our plan subject to two conditions, both of which have to occur before the committee could reassess and determine to pursue a

different path.

Number one is that there cannot be a material recovery to equity, and I think it's fair to say that we believe the amended plan does provide a material return to equity. But the second requirement -- and they both have to be met -- is that the debtors have to modify their good faith assessment of the allowed claims it anticipates in the general --

VOICE: Hi (indiscernible) --

MR. LAURIA: Excuse me?

THE COURT: Could all parties please be muted other than Mr. Lauria? Thank you.

Go ahead.

MR. LAURIA: Again, just to be clear that our good faith assessment of the claims that would become allowed claims in the general unsecured class is adjusted in a fashion that would cause the 550 cap not to result in a full 100 percent cash payout of those claims. And, as I've reflected for the Court, we currently -- our good faith estimate is currently below that threshold, and we've reviewed that with the committee and its advisers, so we do not believe that the second requirement has been triggered.

So, Your Honor, I guess I should pause here for a moment and see if we have any remaining objections to address. And then I guess what it would make sense to do is

walk the Court through the solicitation and rights offering procedures and our proposed timeline for getting to confirmation, so that we can address any questions or concerns that the Court has and hopefully lock down not only approval of the disclosure statement, but approval of our proposed solicitation and rights offering procedures and the timeline for us to move forward with confirmation of the plan.

THE COURT: All right. Let's see if any other party wishes to be heard with any remaining issues or objections to those procedures or the disclosure statement itself.

MR. GLENN: Thank you, Your Honor.

THE COURT: Mr. Glenn?

MR. GLENN: Thank you. Andrew Glenn Agre Bergman & Fuentes, on behalf of the ad hoc equity committee.

I think everything Mr. Lauria reported is good news for shareholders and other stakeholders of this estate and we welcome it, but I think it also shows, Judge, that the process is ongoing.

What you've heard from Mr. Lauria is that the general unsecured claims are now getting a par recovery. I think that substantiates our arguments that equity is the fulcrum class of this bankruptcy, but I think a couple both procedural and substantive issues are important to highlight.

First, the break-up fee, we continue to object to that. And the reason we continue to object to that is we don't think this process has reached its conclusion. The Knighthead Group submitted a revised proposal over the weekend and that proposal provides for un-impairment of both the bonds and the general unsecured claims, it provides a 50-cent recovery to shareholders, plus the right to subscribe to a $1 billion rights offering.

Now, as I understand where we are now, there are two major impediments, and Mr. Lauria and maybe Mr. Derrough will correct me later, but I think the main one is whether our group, the Knighthead Group, has committed bank financing and why it doesn't have that now is largely due to, in our view, process reasons, the inability to speak to the lenders to satisfy that concern by the company.

Number two, that 50-cent distribution to the equity would be a cash distribution and that happens to equate, Your Honor, to the amount that is being afforded in cash -- the break-up fee does amounts to that -- the shareholder distribution that Knighthead has proposed. So I believe 50 cents on the dollar is around 75 million, the break-up fee is around 77.

So that's really what's at stake today. I think Mr. Hessler will tell you and the evidence will show that Knighthead is prepared to move forward immediately without

any break-up fee at all, number one; and, number two, it is willing to provide committed financing for this Euro obligation apart from the plan, the Knighthead plan moving forward as a bridge.

So we still have the May 1st deadline under the Centerbridge proposal, that hasn't changed. And our view is we got this proposal, I think, literally just before the hearing, so Knighthead hasn't had an opportunity to react to it, we haven't had the opportunity to study it.

So I think what you're hearing now when Ms. Caton indicated that she believed an adjournment would be appropriate so she could study what was on the line for her clients, I think the same thing is now true for the equity. The equity is the fulcrum. It's unclear to us whether this proposal is better than the Knighthead proposal because we haven't had a chance to study it, but, number two, I don't think the process is over. I think Knighthead is willing to continue doing work and we still have the May 1st deadline.

So I think all this is good news. We're very happy in the recognition that the equity is fulcrum, but I think what's going on now really is that the GUCs have been almost rendered agnostic to the two proposals. I think our treatment of the GUCs is completely uncapped, what Mr. Lauria said is there's a cap but it probably doesn't matter.

So what you're seeing, Judge, is really now a tug-

of-war between the bondholders and the shareholders over who is going to have the upside of this company moving forward. And given that the break-up fee roughly accounts for, at least in our circumstance, the equity recovery, I still think we are where we were last week, which is an ongoing process, a constituency who could be adversely affected by the break-up fee, a bidder who's willing to solve the company's problems. And what you'll hear from the evidence later is that the reason we haven't been able to finalize our bid and make it the superior offer that Mr. Lauria acknowledges that it might be is due to NDAs with the lenders that --

THE COURT: All right.

MR. GLENN: -- (indiscernible) any conversations.

THE COURT: All right. And, Mr. Glenn, you're basically saying that you think a little more time is needed and/or deny the break-up fee, those are the -- that's the issue?

MR. GLENN: That's correct, Your Honor.

THE COURT: All right. Well, let me hear from anybody else who wants to be heard on --

MS. RICHENDERFER: Your Honor --

THE COURT: -- where we are.

MS. RICHENDERFER: -- this is Linda Richenderfer from the Office of the United States Trustee. I think this is all wonderful news. More money to creditors, money to

equity is always welcomed. My concern today, though, is I don't have any of the documents. I just got a copy of the Court's modified second amended plan. I don't have black lines yet, I don't have a disclosure statement, revised one yet. I think I just filed -- I think debtors just filed on the docket a revised order from the disclosure statement and solicitation procedures.

I did have discussions yesterday with debtors about changing language regarding releases. I have not had any opportunity, though, to review any of these materials and the United States Trustee has a duty to do so and we'll be exercising that duty.

So my concern about the time table here is that without the ability to review the information and perform an analysis of it, I don't see how we can move forward on approval of the documents at this point. And I'm not saying this has to be moved several days. Maybe it's later today, I don't know, maybe it's tomorrow. We have time tomorrow and I don't know what the emergency nature, if any, of moving forward on the other matters tomorrow on the 22nd. But my concern is just the ability of parties such as myself, the United States Trustee, who hasn't seen these materials, to review them. That's my concern, Your Honor.

THE COURT: All right, I hear you.

Anybody else?

MS. CATON: Yes. Good morning, Your Honor, Amy Caton from Kramer & Levin on behalf of the unsecured creditors committee.

I want to leave to the side for the moment the U.S. Trustee's concerns about reviewing the documents. I will note that when we received them, we also received them I think late last night and some this morning, and the changes in some respects are fairly minimal. So we may be able to take care of the U.S. Trustee's request to review the documents fairly quickly, but I certainly understand her concern.

But let me just get to the heart of what our views are on the revised plan, because we certainly are not agnostic at this point, unlike what Mr. Glenn said.

So, as has been noted, the revised plan essentially trues up the unsecured claims to receiving what is currently projected to be a hundred-cent plan. So the unsecured claims will get a cash pot of 550 million, which gives a projected additional 18 cents more. And we note -- and I think Mr. Glenn and Mr. Lauria have noted that this is not necessarily a hundred-cent plan as we are taking risk on the debtors' projections on what the claims pool is, and we're also not receiving any post-petition interests.

So where we see it is we're sitting here today with one plan before us and one potential proposal that's

still evolving in front of us. And the plan sitting here today is a hundred-cent plan for unsecured creditors, supported by unsecured creditors now across the board, with fully-committed exit financing, and we're ready to move forward towards confirmation.

And we appreciate how hard the Knighthead and Certares folks are working. We hope that their plan evolves and changes into a superior proposal through its iterations with fully committed financing, but the fact is today the plan before Your Honor is a fully-baked plan, it's ready to go out for solicitation and I think, versus the weighing that we were doing last week, we're now on the side of viewing this as it's time to move forward and it is time to pay the break-up fee and (indiscernible) in this plan. And if it turns out that the Knighthead and Certares plan appears to be a superior plan, as Mr. Lauria says, we can pivot.

So the problems that we have today versus what we had last week is there is a deadline of May 1st, we literally -- we're starting to run out of time under the current plan, and our financial advisers do agree with the debtors that getting the debtors out of bankruptcy, making sure that they can move forward with their exit financing, buying vehicles, all of this is critical to make sure that we can actually get the unsecured creditors, meaning the bond creditors, the recovery that they've negotiated for in terms of the value of

the stock.

So I don't think, given what we've all been through over the past 15 months, that we can say another couple of weeks of delay is meaningless and we should just wait. I think now, sort of weighing all the balances of a new plan that gave creditors hopefully a hundred cents on the dollar, give something to the equity, and we can continue to negotiate with the Knighthead and Certares folks if they want to stick around, I think, balancing everything, this is the time to move forward.

So we fully support the debtors in moving forward today with the approval of the disclosure statement and we hope that Your Honor can enter the disclosure statement order today.

THE COURT: Thank you.

Anybody else?

MS. STRICKLAND: Good morning, Your Honor, Rachel Strickland from Willkie Farr & Gallagher on behalf of the note holders.

This is not a tug-of-war, as Mr. Glenn said. The company has a committed, documented proposal in its right hand, sort of asking for Your Honor's approval to begin the solicitation process for, in the other hand it has a three-page PowerPoint. As of the case on Friday, we can represent that the plan proposed to be solicited is supported by every

creditor constituency. And at this point the bonds are far and away the largest stakeholder in these cases, we have over $2 billion of debt, and we are impaired.

So I am also optimistic and happy about the trend that the company is looking at. We are all hopeful not just for Hertz but for the world that COVID continues going in the right direction, but the reality is that warrants in some creditor -- or, I'm sorry, equity group in this case ends up being in the money is very different from proclaiming someone the fulcrum. And I won't say any more about that because it's a confirmation issue and it's not for today.

The EPCA that is before you for approval is the backbone of the plan. It ensures that the debtors have the financing commitments to move forward with a finance deal. That our clients have 87 percent of the bonds, they have agreed to vote in favor of this plan; they are also funding $1.6 billion here. In return, they have not asked for a backstop fee, which would be very typical. Instead, the EPCA contemplates a three percent break-up fee, which I believe, as Mr. Derrough is going to testify to based on the submissions he's already made with the Court, is well under market and a reasonable expense reimbursement. These things are reasonable and they're routinely approved.

And the other thing about the one more day, one more week, one more month discussion is the company came to

us, even though we are creditors of the U.S. debtors, and said we have a problem with another part of the world that impacts the enterprise value, we need emergency financing right now for Europe, please provide it, and we did. And we raced around with our colleagues across the pond and we gave it to them on a fully committed basis. And my understanding is that the company believes that has to close today and it's all part and parcel of the deal.

Now, we are not -- that's not a huge money-making opportunity for anyone, it's not about fees, it's really about supporting the company and the overall health of the enterprise. And they asked us to help and we said yes, and it is very, very time sensitive. So I think all of this other, you know, attempts to create confusion in the record by citing terms that somebody wrote down in a three-page PowerPoint last night are nice, but on behalf of the largest creditor of Hertz, we say we wholeheartedly support the debtors, we think the EPCA is a pure business judgment issue. We anticipate that the record at the conclusion of the hearing will more than support the debtors' business judgment here. And the disclosure statement, as I think Your Honor efficiently handled at the last hearing, is I believe uncontested.

So the only thing that has changed from then is that the fiduciaries in these cases have had an opportunity

to review every piece of paper that's before them. I believe Mr. Lauria has now had three or four board meetings since the last time we spoke, including one this morning. And people are not just working hard because there's a live auction, people are working hard because they want to make sure that every T is crossed and every I is dotted, and it has been.

So there will be time for people to flesh out their three-page PowerPoint into something meatier and, if it's real, great, but if not, we've got to get on with the show. Knighthead and Certares have been involved since way before our plan was every proposed to the Court, they knew all the time tables, they knew when Your Honor scheduled this hearing in front of all of us that the date was going to be 11:30 this morning. So for them to come and say we just need more time, the breakup fee is this, the expense reimbursement is that, is just noise, in our view.

So the bonds, as the stakeholders here, are wholly supportive of Your Honor entering both of the orders and we appreciate it. Thank you, Your Honor.

THE COURT: Anybody else?

MR. HESSLER: Yes, Your Honor. Steve Hessler of Kirkland & Ellis on behalf of Knighthead and Certares. May I be heard?

THE COURT: Yes, you may.

MR. HESSLER: Thank you very much, Your Honor.

I'll keep my comments very brief and very targeted, and I'm really going to attempt to address both what Your Honor has said thus far, as well as a number of other parties have sort of said things about what we are and are not doing. So I would like just to clarify that for the Court and for all stakeholders.

First and overwhelmingly most importantly, Your Honor, we are equally committed, as is the company, to the timeline to achieve an emergence from Chapter 11 by the end of June, I want that to be abundantly clear, and I'm going to address those specific ones in a moment. We absolutely support that. All and everything we're doing is in furtherance of that goal. So I hope people take us at our word on that.

To further reflect on that, Your Honor -- first of all, with regard to the disclosure statement, which is the specific piece right before you at the moment, we have been engaged in a dialogue with Mr. Lauria and his colleagues that is a constructive dialogue with regard to the disclosure statement, depending on where Your Honor does and does not go this morning, but to the extent --

THE COURT: Mr. Hessler, I think it's your mike that's causing some feedback here. You have a --

MR. HESSLER: Is this --

THE COURT: That's better.

MR. HESSLER: Okay. Thank you, Your Honor. I'm sorry. I'm not sure what that was. Can you hear me okay, Your Honor?

THE COURT: I can now.

MR. HESSLER: Okay. Thank you very much, Your Honor. Should I start again at the beginning or -- can you hear me, Your Honor, because I'm now not hearing you.

THE COURT: Yes. It's fine now, you don't have to start over.

MR. HESSLER: Thank you very much, Your Honor. I'll pick up with regard to in furtherance of the theme that we want this to all move as expeditiously as possible. I'm going to make three discrete points, Your Honor.

With regard to the disclosure statement specifically, what I was saying is we had been in communication with Mr. Lauria and his colleague, they sent us some language right before the start of this hearing, which we appreciate, which reinforces what is being provided to the Court with the assurances that if the disclosure was approved today on the existing plan sponsored proposals, that the board of directors will continue to work with us and we're getting assurance that we will have the ability to talk to any financing parties, cooperation and talking with (indiscernible) agencies.

So, Your Honor, we are heartened by that and we're

in the process of trying to put some language back before White & Case for consideration. The language we've seen -- my understanding and others can correct me as needed, but the language that we're presently proposing some modifications, that itself is not yet on file. So, Your Honor, it's not a reservation on an objection or anything like that. I would just note to the Court, hopefully -- and I'm confident on this front -- we'll be able to get to a point where that language does reflect our understanding of the company's commitment to continue to work with our group depending on what happens at the conclusion of today's hearing. So we extend our thanks on that front.

Your Honor, quite specifically, Mr. Glenn made a number of comments, I'm not going to belabor or repeat any of those except to say that, you know, we do agree with most of them. But the one point that shouldn't be lost, depending on this and whether the Court does get to a consideration of the breakup fee today, again, we're not looking for a delay of (indiscernible) our proposal, we have already committed to go forward without a breakup fee. I just want that to be in the record so that people aren't representing on our behalf what we're doing. Our proposal does not turn on a breakup fee and we're not looking for any delay on that front.

And then lastly, Your Honor, specifically on the European financing, it's -- we have offered repeatedly to do

the financing, this 250 million Euro facility, and we repeat for Your Honor this morning, we will do that financing on terms that are more favorable to the estate. We've provided a commitment letter, we will do that financing on terms that are more favorable to the estate without it being tied to the board's approval of our plan.

So I want to make sure that we're clear on that. We have given a commitment letter to the company, we're not asking for a delay on any front. We will enter into that financing on terms that are more favorable to the company than are presently before it and it is not tied to the board pivoting towards our plan. We believe it is an extreme show of good faith that we're committed to the company's goal of an expeditious emergence from Chapter 11 and we do not want there to be any delay in that front, and we believe that this will be in furtherance of continued negotiations around our proposal.

So I just don't want there to be any ambiguity or lack of clarity on that, Your Honor, and we're ready, willing, and able to execute that commitment letter today, even if Your Honor does not approve the existing -- not yet approved the existing disclosure statement or the board has not yet pivoted to our proposal.

Thank you, Your Honor. And depending on whether and in what fashion the process goes forward on the EPCA, I

may seek to be heard again further, but I appreciate the opportunity to offer those comments at this time.

THE COURT: All right, thank you.

Anybody else?

MR. ENTWISTLE: Your Honor, this is Andrew Entwistle. May I be heard?

THE COURT: You may.

MR. ENTWISTLE: Thank you, Your Honor.

As you know, we've been participating since the beginning of the case and have long spoken on behalf of equity and its interests, and have taken the position in other hearings that we felt that ultimately it would prove that equity is, as the saying goes, in the money, and we're glad that that's where the process has led.

I'd like to thank Mr. Lauria. We did reach out; we actually made a suggestion that's something similar to what they ended up doing. I haven't seen all the details of the terms, but I appreciate the fact that the debtor was responsive in that regard. And to Mr. Hessler and his team, who spent some time with us on the phone yesterday reviewing what they've been doing, all for the benefit of equity.

I'd like to just really make one point and it does speak to some of the statements that were made by the committee, and to Ms. Strickland and others. Their interests obviously are all obvious, their points are all well taken

and well made, but we do still have under the existing proposal until May the 1st for a decision on the EPCA and the incorporated breakup fee. And I don't think it should be lost on anyone that that $77 million breakup fee is a hurdle for the competing plan bid, assuming that ultimately the company wants to turn to it, at least in the sense of, you know, reducing what equity will ultimately receive here.

And I think we've now reached the point where there does need to be a balance, without delaying the process -- and we're very, very attuned to that concern by Mr. Lauria and others -- but I think we've heard that both Ms. Strickland's clients and Mr. Hessler's clients are both committed -- or have both committed to do the equity financing that is required for Europe and that that can all be done today, as is requested. And so it seems that there's no reason for us not to look forward at least a week and give the parties an opportunity, and give the company a little more fulsome opportunity to evaluate, to see where things stand, and then to see if it wants to pivot under 3019 or otherwise to the alternative plan before we have the impediment of a breakup fee, particularly -- and Your Honor has spoken to this issue in other cases where, as here, we have one plan that does not have a break-up fee, that's the competing plan, and one that does. And it seems that just looking forward a week would not be -- would not impact any

aspect of what's before Your Honor given that we've now satisfied -- or it sounds like the parties have satisfied the equity -- I'm sorry, the lending commitment concern for the ABS in Europe.

Thank you, Your Honor.

THE COURT: All right. Any other party wish to be heard?

MR. HEBBELN: Yes, Your Honor, this is Mark Hebbeln. May I be heard?

THE COURT: You may.

MR. HEBBELN: Good afternoon, Your Honor, Mark Hebbeln, Foley & Lardner, on behalf of Wells Fargo Bank National Association, which is the indenture trustee for the senior notes, in the aggregate principal note of $2.7 billion. Wells Fargo also serves as a member of the official committee of unsecured creditors.

Your Honor, you've heard that the Willkie Farr firm represents holders holding approximately 87 percent in principal amount of the senior unsecured notes, but as indenture trustee it's our job to represent the interests of all holders, the Willkie group and the other 13 percent or so, which equates to about $350 million worth of holders out there. We won't belabor the points that have been made by others, but in our capacity as the representative of holders of all of the senior notes, we wanted to let you know that we

would echo Ms. Strickland's comments and Ms. Caton's comments to the Court today.

And we'd also note that, as future equity owners in the company, bondholders, the senior unsecured bondholders are probably the most likely to be hurt by any delay and potential deterioration in the business of Hertz. So, for those reasons, we would ask Your Honor to approve the motions before you today.

And, unless you have any questions, that's all I have, Your Honor.

THE COURT: Any remaining parties with to be heard before I turn back to Mr. Lauria?

All right. Mr. Lauria, any response?

MR. LAURIA: Yes, Your Honor, a number of points.

First of all, the comments made by the self-proclaimed ad hoc equity committee. First of all, we're talking about the disclosure statement right now and I didn't really hear any objection to the approval of the disclosure statement. I think we're going to make an evidentiary record when we turn to the EPCA and I believe that that record will support under legal principles the Court's approval of the EPCA, including the breakup fee and the expense reimbursement.

What we are hearing is the desire that we continue to engage and see if we can get to a place where there's a

better recovery for our stakeholder, including the shareholders, on terms that work for the company. And I couldn't be clearer, I think, that the company is committed to that and that the board of directors has made a determination regarding the possibility that this alternative proposal could become a superior proposal, and that they believe that their fiduciary duties dictate that they should pursue that to see if it can get there. But we believe, based on the prior experience and in particular the powers that we have under Bankruptcy Rule 3019, that we can do both things at the same time. We can walk and chew gum, if that's a metaphor that people get. And that the reality is we have an executed deal before us that if we delay further -- and it's not the May 1 date in the EPCA that requires an order approving it, it's the commencement of the solicitation process, which we are told we are right up against, you know, missing the opportunity to hold our timeline.

So we don't really have more days to delay or we start delaying the timeline. And as the Court knows, you know, time is not a Chapter 11 case's friend. Cases don't get better, as a general proposition, with the passage of time. We face an uncertain future. Everybody is very excited about things that have happened to this point, but the things that have happened to this point that are positive were unexpected just a month or two ago. And so, you know,

I've seen it dozens of times, I'm sure the Court has as well, when you see a curve that goes like this, so often you later see a curve that goes like that. And we want to try to capitalize on where we are in that curve right now, which is way up here. And there is no assurance that the continued upward trend is going to continue and I think the fair thing is to say that we've got a lot more downside to worry about than upside to gain. And I think we're not going to try to get it, that we need to move forward.

So I think that the objections to the EPCA we should take up when we have a record on the EPCA, but in the meantime I don't think there really are any pending objections to the disclosure statement.

With respect to the U.S. Trustee's concerns -- and I hear them and I'm sensitive to the U.S. Trustee's need to review the documents, I would offer these comments. Number one, I think that counsel will find that the modifications are very minor when it comes to the substance of the documents. There are ripple effects and words that have to be changed here and there to make sure that everything is consistent, but that we have addressed the U.S. Trustee's concern regarding the scope of releases, I think that it has been discussed with counsel, and we certainly would make every effort to reserve the U.S. Trustee's rights to confirm that she has no problems with the changes that we've made and

that the changes we've made are consistent with the Court's ruling on Friday and satisfactory to the U.S. Trustee. I don't think that should uphold getting the disclosure statement entered and getting the solicitation procedures and rights offering approved. We can certainly agree that if the U.S. Trustee has any issues that we will come back at her convenience and at the Court's convenience to make sure they're addressed if we can't address them through a discussion with her.

And let me just say with respect to the comments of Mr. Hessler, we're happy to take their further language suggestions regarding how our commitment to cooperate and working with them to see if can develop the proposal into a superior puzzle, subject to making sure that that language is consistent with and does not put us in violation of our plan support obligations.

So I would ask that we move forward with approval of the disclosure statement, that we answer any questions the Court has regarding the timeline, the solicitation procedures, et cetera. Let's get that done and then let's turn to the EPCA, where we will make a record to support the Court's consideration.

THE COURT: Well, let me ask the U.S. Trustee if that type of a procedure could work. I don't see any blackline document filed yet, though. Ms. Richenderfer?

MS. RICHENDERFER: Your Honor, I think with the disclosure statement order, it's Exhibit B to what got filed, I have been trying to listen to the discussion and review the blackline. I've still got a ways to go --

THE COURT: It has been filed?

MS. RICHENDERFER: It is --

(Pause)

MS. RICHENDERFER: I'm trying to find the docket item numbers. If Mr. Haywood is on, he can probably help with this.

THE COURT: Mr. Haywood?

MR. HAYWOOD: Your Honor, maybe I can help here. We supposedly did file a set of changed pages only with respect to the plan and disclosure statement.

Can one of my colleague's confirm that that's been done and where that is on the docket?

MR. COLODNY: Your Honor, Aaron Colodny from White & Case. The blackline is at 4082.

MS. RICHENDERFER: And, Your Honor, I just found at 4079, the document is entitled "Notice of Filing Under Revised DS Order." Exhibit D to 4079 is a blackline of the disclosure statement order, along with blacklines of solicitation procedures and the ballots. That's what I've been focusing on first, Your Honor.

I don't know if there's a separate motion for the

rights offering or where that fits in Mr. Lauria's proposal, because perhaps that can go forward first, and I will commit to continue to reviewing the blacklines here in the meantime. I've got no problem with doing that. I just didn't want to go straight into disclosure statement without having the ability to work my way through all of the changes to the order and the disclosure statement. I do believe that -- it may not be substantial, but the documents are large and so it takes a while to get through them, to page through them and look at the changes.

So I don't know whether we can do rights offering first, if that's possible, or if the disclosure statement has to go first.

MR. GLENN: Your Honor, may I be heard briefly?

THE COURT: Yes.

MR. GLENN: Thank you. Just for the record, we don't have any objections to the disclosure statement. I thought I made that clear last week. However, I do have a logistical concern that's tied up with the breakup fee and even the solicitation procedures, and maybe there's some practical way to resolve this. How is it going to work if the Knighthead plan does ultimately go forward when the company has already sent out a solicitation package to one set of stakeholders with one set of rights offering subscription procedures. And then Knighthead comes in, it

has a billion dollar rights offering that will go both to the equity and the bonds.

If we pivot, I'm concerned -- I mean, obviously, I want this to pivot and I think that's hopefully where this is going to end up, but mindful of Mr. Lauria's concerns about getting the disclosure statement out, how would this work logistically if we have two sets of rights offerings that are going out. It just seems to me that will create a tremendous amount of confusion in the stakeholder universe. Maybe there's some practical solution I'm missing, but I want to make clear we don't object to the disclosure statement, but we also want to ensure that there's a practical pathway that works for Knighthead to come in.

THE COURT: Mr. Lauria, do you want to deal with that?

MR. LAURIA: Yes, sure. Our thinking, Your Honor, is that, as a practical matter, the back and forth, the effort to come to an alternative deal is going to have to come to an end at some point. At some point we're going to have to say, hey, we've gone as far as we can, we need to call it. If at that time we do have a superior proposal, we'll come back in with some supplemental solicitation materials. And I would expect that what that would include is a structure on the rights offering for the equity is some sort of a short-term warrant.

And we believe that this structure may well have benefits to folks because, rather than being treated as a cash payment, we think we may be able to architect around Section 1145 and keep the offer as an exempt offer by doing it that way, which means it will be available to not only QIBs, but also non-QIBs, the moms-and-pops, which we think is important to get value to. But we'll be back here to make that fix, if we're so lucky to be in a position where a fix like that is appropriate.

(Pause)

THE COURT: Well, I'm going to suggest this. I'm going to -- I think there is not going to be any testimony or other argument regarding the disclosure statement, but I think we have to give the parties and the Court the opportunity to look at the blackline. And I'm going to suggest that maybe we continue the disclosure statement hearing until 2 o'clock today and go ahead with the EPCA motion and the record you want to present on that. Does that work for the U.S. Trustee, Ms. Richenderfer?

MS. RICHENDERFER: Yes, Your Honor. It's my understanding that no changes have been made to the materials concerning the EPCA and, based on that, that would be fine, that would be acceptable, and would give me time to review while I listen.

THE COURT: Well, hopefully, the EPCA will be

short and we can take a short break for you to review it. But, Mr. Lauria, why don't you go ahead with the EPCA motion.

MR. LAURIA: Very well, Your Honor. Thank you. So, Your Honor, we have before the Court a motion seeking approval of the EPCA and I believe we have one pending objection. That objection has been restated on the record here by counsel for the ad hoc equity group to the approval and authorization of the breakup fee and the expense reimbursement.

Rather than going -- making argument upfront at this point, I think the issues have been framed. What I'd like to propose that we do is go straight to the evidence. My partner Jason Zakia is here to present both the declarations of Mr. Derrough, our financial adviser, and also to offer some supplemental direct testimony and then offer Mr. Derrough for cross-examination.

THE COURT: That’s a good procedure. Let’s go ahead.

Mr. Zakia?

MR. ZAKIA: Good afternoon, Your Honor. Jason Zakia of White & Case for the debtors.

We will endeavor to move through this quickly and try and salvage some lunchbreak for everybody.

Your Honor, as Mr. Lauria indicated, in support of the EPCA motion Mr. Derrough submitted two declarations; the

initial declaration which is found at Docket 3497-2, and a supplemental declaration which is found at 3923. And while we do intend to offer Mr. Derrough's live direct testimony we would suggest it would streamline things if we could also offer the declarations into evidence and would do so at this time.

THE COURT: What was the original declaration docket number?

MR. ZAKIA: 3497-2. I believe it was an exhibit to the EPCA motion.

THE COURT: Okay. Alright, any objection to those being admitted subject to cross examination?

MR. GLENN: No, Your Honor. Thank you.

THE COURT: Alright, they are admitted.

(Declarations of William Derrough received into evidence)

MR. ZAKIA: Thank you, Your Honor.

At this time we call Bill Derrough.

THE COURT: Alright, I will ask the ECRO to give you the oath.

WILLIAM DERROUGH, DEBTOR WITNESS, SWORN

THE ECRO: Please state your full name and spell your last name for the record.

THE WITNESS: My full name is William, middle

initial Q, Derrough. Last name is spelled D-E-R-R-O-U-G-H.

THE ECRO: Thank you.

MR. ZAKIA: Thank you, Your Honor.

May I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. ZAKIA:

Q Mr. Derrough, you submitted two declarations in support of the EPCA motion. Is that correct?

A Correct.

Q And so as to not have to repeat everything that is in there you're familiar with those two declarations?

A I am.

Q And is everything that is set forth in those declarations representative of testimony that you would repeat and reaffirm if it was done, same topics, live here today?

A Yes, I would.

Q Anything about them that you need to correct or change?

A No.

Q Okay. So I don't want to repeat everything that was set forth in the declarations. I do want to touch on a few topics that are covered.

First, could you just explain to the court what the EPCA motion -- what the EPCA agreement is and its purpose in the plan process?

A So the EPCA is an agreement between the client sponsors and committed equity investors and the company which lays out the terms of their equity investment and commits them to funding the plan or funding the equity portion of the plan. You know, it's a very detailed document, you know, (indiscernible) date by which it needs to be approved and, obviously, the economic terms.

Q We've heard a lot of discussion today about a breakup fee. Is there a -- is breakup fee one of the terms of the EPCA?

A Yes, it is.

Q And could you just describe for us, please, sir, how that works?

A Sure. The breakup fee is calculated to be about 3 percent of the funded equity commitment or the equity commitment. Its payable if an alternative transaction is entered into by the debtors. So if these investors are not the eventual successful investors is when it would be paid.

Q And in your experience is an investment banker are provisions such as this typical in transactions such as this?

A Absolutely.

Q Could you explain why?

A Sure. Ultimately what we're doing, as the debtor or the estate, is locking in financing. We're asking people to commit to finance even though we might pick somebody else down the road. So I'm trying to thinking of it as an insurance policy very similar to what we're going to be asking the court to do with the debt financing.

In my experience I'm trying to think of any example when there wasn't some type of commitment fee, or breakup fee, or termination fee, I guess you could call it here, in exchange for people agreed to commit.

Q Could you explain, please, for the court, sir, just the process and the negotiations that led to the debtors' agreement to include this breakup in the EPCA?

A Sure. So I think it's important, as we've been running a competitive process initially, to three groups, the ad hoc bondholder group represented by Ms. Strickland; the Knighthead and Certares Group; and the Centerbridge, Warburg Groups. You know, that process, basically, started towards the end of last year in terms of, you know, (indiscernible) engaging with folks.

I can't tell you off the top of my head how many rounds we went amongst those three horses, but, you know, my recollection is we started at a recovery level somewhere

around maybe 50 cents on the dollar to creditors and the shareholders. There were multiple rounds along the way. Each of those rounds, the different horses were working for different, you know, types of economic compensation. In some cases in the forms of significant discounts, plan values, backstop, breakup fees; things like that.

I believe towards the end of the last round of negotiations parties were around 5 percent in the aggregate number of breakup fee quantum. And I think we even filed a motion at one point saying 3 to 5 percent. Ultimately we negotiated it down to 3 percent which is what we have today.

So it was a highly competitive process that was thoroughly negotiated to get to where we are here.

Q I believe you testified a moment ago, sir that the breakup fee would only be paid upon consummation of an alternative transaction. What would be the source of the funds to pay the breakup fee in the event that it was paid?

A Well I mean the company will emerge with significant cash on hand. So it will come out of, I guess, directly out of (indiscernible). In practice you would assume that the price would go up to reflect that at a very minimum.

Q So the proceeds of the alternative transaction would be the source of that?

A Ultimately, yes.

Q Okay. Now you talked about the fee ultimately as a result of your negotiations being agreed at 3 percent. Did you do any work to determine whether 3 percent was a reasonable fee to repay?

A Yes, I did.

Q Okay. I think your supplemental declaration sets out some of the details of that, but if you could just generally tell us what you did and what your conclusion was?

A Sure. So we looked at both termination fees for committed equity rights offerings like this which we think are good corollaries or analogs, we also looked at breakup fees in the context of whole company sales like 363 sales in Chapter 11. On the former, the backstopped or committed equity funding type transactions, similar to this, typically were significantly higher. My recollection is on average 6 percent. I'd have to refer to my declaration to refresh my memory for precision. In general it's significantly higher than the 3 percent we're talking about here.

Then, you know, on 363 sales you typically see 3, 4 percent. That is on the overall enterprise value and we're talking about 3 percent on the committed equity amounts. So when you actually do the math on enterprise value, which I think is another reasonable way to look at it, you're on the plan value here today that this plan represents, I think,

it's something like 1.4 percent on total enterprise value. That would be analogous to, you know, a 363 sale context when we're talking overall enterprise.

Q So as the debtors' lead investment banker did the work that you do allow you to form a conclusion as to whether you believe that 3 percent fee is reasonable or unreasonable?

A Yes.

Q What was your conclusion?

A My conclusion is that the fee is absolutely reasonable. I think we got to a very good outcome here at 3 percent, 3 percent of the equity commitment.

Q So I (indiscernible) that we've heard talk through the course of the hearing and the last hearing about delay. I'd like to ask you a few questions about delay and impact on the company.

Could you please explain the connection between the EPCA that we're asking the court to explain the connection between the EPCA that we're asking the court to approve today and the funding of the European business that we have heard? Could you explain what that is?

A Sure. So upon entering the order approving the EPCA the company will be able to access 250 million euros of bridge financing, effectively, to inject into the European

business to bolster its liquidity. That is probably the most important near term issue for the company.

Q And, first, I'd like to ask what's the source of that funding.

A The source of that funding are the plan sponsors tied to the EPCA.

Q And what is the status of that document? Is that fully documented? What is the time lag between approval by the court and the ability to execute on that, if any?

A So the documents are fully negotiated and executed. The timing -- my understanding is that the timing is once this is approved the company can, essentially, push a button and get those funds sent over.

Q Okay. I'd like to talk about the meat of those funds. Could you please explain to the court why the company requires that bridge loans and the funds that it provides, and the timing on which that funding is required?

A Sure. So we have -- I was going to say the word -- well, we worked very hard, the company, the management of the company, to keep the European business, you know, all the wheels on the car, if we're going to go with lots of car metaphors here. We have been very close a number of times.

Everyone is aware that we negotiated a restructuring in the European business at one point that had some objections

from folks in terms of the structure of it, but most of that was driven by the need for cash into Europe. The management team in Europe and, of course, the US management team as the parent had been working incredibly hard to keep those wheels on that car.

As Mr. Lauria mentioned earlier, ordering vehicles is very important. New vehicles are very important for rental car businesses both from a customer perception, you know, people want to rent the newer vehicles, but also from a service and repair perspective. The older your (indiscernible) gets the more expensive it is to service.

So ensuring that the European business has liquidity to operate and not be running on fumes, another car metaphor, and is in a position to be able to buy these vehicles we think is very important. And we think getting that money into the company. And the near term will ensure that we protect the value of the business.

Q When you say in the near term when does the European operations require that?

A Well we (indiscernible) requires the money essentially immediately. I think next week it's projected to be -- well, I don't know if you want to say it in open court or not from a competitive dynamic perspective, but I would say that it's

getting tight. The sooner the company in Europe gets the money the better.

Q Now in addition to the European operations and the effect of any delay we heard some talk about the need for the company, as a whole, to exit bankrutpcy. I'd like to ask you a couple of questions about that.

Could you please -- well, first of all, what is the company's current target date for emergence from Chapter 11?

A The current targeted (indiscernible)

Q Could you explain for us, please, sir, what the economic impact for the business would be if that timetable were to be delayed?

A Well the obvious first one is the longer a bankruptcy case drags on there's all the cost associated with prosecuting the bankruptcy. So there's the bankruptcy burn, I guess you would say. But there's also just the competitive disadvantaged company, as we say, suffered from when you're two biggest competitors, Avis and Enterprise, are not in bankruptcy.

What we have been seeing is that it has made it harder for Hertz to buy, to place orders, to get orders for the vehicles they really want relative to their competitors by being in bankruptcy. You know, the certainty that the OEM's would like to see in terms of a company's liquidity, and

capital structure, and ability to make good on their orders is really important. And with this global ship shortage I think it's estimated that the number of vehicles produced went from (indiscernible) left this year.

So that just means there's lots of vehicles for everybody to buy. And if we're at a disadvantage in terms of our ability to commit or convince people that we're going to be there is only rational, I think, to assume that we're just not going to get offered, you know, everything we want. Someone else is more likely to make a better deal no matter the pay-up in price or things like.

So we think we'd be at a disadvantage and then ultimately it's going to --

Q Sorry, before we move onto the next point I want to ask one follow-up question on what you just said. Could you explain to the court what, if any, connection there is between the company's ability to buy new cars and the company's ability to execute on its business plan, and what the impacts could be if it wasn't able to do the first?

A Sure. So a key element of the company's business plan is an assumption that the company would be able to re-fleet back up to a more normalized competitive level. As everyone (indiscernible) the company needed to reduce its fleet in

order to address its prepetition ABF's structure and ultimate negotiation we had there.

You know, currently that has put the company at a disadvantage relative to its two biggest competitors in terms of available vehicles. As mentioned, you know, the longer you keep vehicles and use them the more you're going to have an out of service and pay costs to repair the vehicles. So it ultimately will impact the company's profitability (indiscernible) the business plan.

Even if everybody is suffering from the global chip shortage (indiscernible) vehicles it stands to reason that Hertz will suffer more or not get as good of deals if they can't -- if some of its suppliers are viewing it to be a less attractive counterparty.

Q And I'm sorry, I cut you off before. Are there any other damages, or losses or harms that the company would suffer should its emergence timeline be delayed?

A Well I mean depending on how long its delayed the committed equity or exit financing, I don't remember exactly the timeline on that, but, you know, obviously those letters need to be approved by the court. There is a timeline on that that will burn off at some point.

Q Let me ask you this question. In your experience as an investment banker, I believe 30 years of experience, how

would you describe the current market conditions in the credit market that have been in place while the current plan has been put in place?

A We've been talking about this a lot, not in the sense of the Hertz dynamic solely, but in general. I can't recall a more robust positive credit market in my career in terms of availability credit pricing. Its -- you know, the city (indiscernible) index is trading at a lower yield now then it was pre-COVID. So, you know, what the market is demanding for the same credit quality bucket of the bond securities.

Interest rates in general are lower than they were pre-COVID even though, as you may recall, reduced interest rates in 2019 I believe. So it's hard to imagine it getting any better than it is right now. I believe 2020 is not the highest amount of how (indiscernible) very close to the top and that's after, obviously, having more at the beginning of COVID.

So it's like that Jack Nicholas movie As Good as it Gets.

Q Well I'm going to ask you a question I think I know the answer to, but we'll take a shot. I mean I do you know how long it's going to last?

A I do not. If I knew that I would probably be in a different business, a different job.

Q And would the company be harmed if the markets were to turn before it had a fully committed lockdown plan in place?

A It is. One of the (indiscernible) that keeps Mr. Lauria and me up at night every single night. The answer is yes. We are incredibly focused on not losing this very attractive, what we believe, exit financing because of delay. It -- well I can (indiscernible) to this SPAC market. The SPAC market has been hot, hot, hot, hot, hot in 2020 and the first quarter of 2021. I think 37 percent of all equity deals in the Hertz quarter of 2021 were SPAC. Now there is a backing up in that market right now.

So, you know, markets can turn very fast. It was one of the main (indiscernible) a lot of things, but (indiscernible) probably every day.

Q Mr. Derrough, we heard a lot of talk about the debtors' plan, which is on file, and a potential alternative transaction that's been proposed -- sorry, Knighthead and Certares. Are those two potential plans at the same stage that we see in place of terms of the debtors' ability to execute on them?

A No, they're not.

Q Could you please explain the difference?

A I think you asked me earlier, you know, about the EPCA the whole thing, the whole proposed plan is ready to go. My

words, fully executed documentation and, essentially, other than meeting the conditions and various documents ready to go the plan and the disclosure statement is ready to go. We don't have that level of detailed documentation on the other proposal that might have at this point.

Q Is that important?

A Sure, for the same reasons that, you know, making sure we don't lose the committed -- the credit exit financing is important. Essentially, we have the proverbial bird in the hand right now which, you know, we all look at it as it's a very good deal. As I mentioned, when we started this process, we stared the competitive process. The initial proposals were around 50 cents on the dollar. We're now talking about recoveries that are very close to par.

So having something that is absolutely executable is very important from the debtors' perspective. It's an insurance policy that we know, again, subject to it meeting the conditions to close that we know we have on hand and we can go with if nothing better comes through.

Q To follow-up on that last point if the court were to approve the debtors' request today and approve the EPCA including the breakup fee would that prevent the debtors from continuing to consider potential alternative transactions be

it the Knighthead/Certares potential alternative or any other potential alternative.

A No. It would not prevent us from doing that. I think we have already demonstrated that we are more than willing and open to anybody coming in with something better.

Q And could you speak about the potential added expense of the breakup fee and how that may or may not impact a potential alternative transaction or a party's willingness to make such a -- to enter into such potential alternative transactions?

A Sure. So the breakup fees is about $75 million approximately. We're talking about, you know, deal values between, you know, low $5 billion and $6 billion. So I think I said earlier that math works out to something like 1.2 to 1.4 percent of total enterprise value since the breakup fee. That doesn't seem to me to be a -- I mean it seems to be a pretty well (indiscernible) when you're talking about, you know, a $5 to $6 billion transaction.

(Indiscernible) transaction is higher to include the value of the vehicle and the ABS which tends to get put off into the company's balance sheet for (indiscernible) perspective. So you can even argue that you're really talking about a $12 to $15 billion company. It doesn't seem to me to be much of an obstacle.

Q So taking into account all the factors that we have discussed here this afternoon do you have a view as to whether the court's approval of the EPCA, including the breakup fee, would be in the best interest of the debtors' estate?

A Yes. I think it's important for the debtor to have some level of certainty in its financing package as we're trying to get this company out of bankruptcy and approve the EPCA will lock into that certainty for us on the equity funding side just like when we come before the court to talk about the exit debt financing.

MR. ZAKIA: Thank you, Mr. Derrough.

Your Honor, I have no further questions.

THE COURT: Alright, does the equity committee wish to cross-examine -- the ad hoc equity committee?

MR. GLENN: Yes, ad hoc. Your Honor, I would appreciate a short break so we can prepare and do this quickly; just five or ten minutes if that's okay.

THE COURT: Does anybody have an objection or does anybody else which to cross first?

(No verbal response)

THE COURT: I'm hearing no objection or other request. So let's take a ten minute break. You can stay in

the room or you can leave. It is now one o'clock on my time. So let's come back at 1:10.

MR. GLENN: Thank you.

THE COURT: Thank you.

(Recess taken at 1:00 p.m.)

(Proceedings resumed at 1:14 p.m.)

THE COURT: Alright, are the parties back?

MR. GLENN: Yes, Your Honor.

THE COURT: Alright, I'm going to keep myself on mute because we're having a thunderstorm here. I will turn it over to Mr. Glenn.

MR. GLENN: Okay. Thank you, Judge.

CROSS EXAMINATION

BY MR. GLENN:

Q Mr. Derrough, are you ready?

A I am ready.

Q Great. Nice to see you.

So for the record Andrew Glenn on behalf of the ad hoc equity committee.

Mr. Derrough, you can hear me clearly?

A Loud and clear.

Q Thank you.

Alright, I'd like to go through a little bit of the timeframe and background of the cases. Just generally

speaking, during the course of these cases you're team at Moelis has been consulting with the debtors and other advisors to determine the debtors' best path for a financial and operational restructuring, correct?

A That's fair, yeah.

Q Okay. And ultimately the debtors, in consultation with Moelis, determined that the debtors would require a significant capital infusion to emerge from Chapter 11 as a viable business, right?

A That's fair as well.

Q Okay. Alright, so in November of 2020 the company held a series of meetings with various constituents and plan sponsors to start the competitive process that brings us here today, correct?

A I don't remember what month it was. It was towards the end of last year. I can't tell you whether it was October, November. November sounds right, Mr. Glenn, but I --

Q Fair enough.

And just so we're clear, the potential plan sponsor groups that emerged at that time were the noteholders, themselves, the Knighthead Group, and the Centerbridge, Warburg, Dundon Group, correct?

A Correct.

Q Now on March 1st of this year, 2021, the debtors determined, in consultation with you, that the proposal from Knighthead and Certares is the most favorable plan sponsor proposal, correct?

A Again, I'm not going to remember dates exactly. It sounds about right. (Indiscernible) calendar wise, but I can't tell you off the top of my head right now if it was March 1st or not.

Q Fair enough, but you agree it was in the early March timeframe, correct?

A Yes.

Q Okay. And the company then filed a plan with this court that incorporated the Knighthead and Certares plan, correct?

A Correct.

Q And after that the Centerbridge Group submitted an enhanced proposal to the company, correct?

A Yes.

Q Okay. As an investment banker this is what you want to see in this kind of process. You want to see competitive tension that leads to the highest and best offer for the plan sponsor, correct?

A Absolutely.

Q Okay. But even after Centerbridge came forward with their enhanced bid, Knighthead and Certares told the company that they were willing to continue to enhance their initial proposal, correct?

A I believe so. I'm trying to -- as I said earlier, we've gone back and forth a lot in terms of rounds and conversations, but something to that effect would have -- you know, it sounds right.

Q Fair enough.

Can we agree that during the month of March there was a lot of back and forth negotiations between the company, Centerbridge on the one hand, and the company and Knighthead on the other?

A I'd say negotiations and communications, how about that.

Q Fair enough.

Then on April 3rd of this month the company decided to go forward with the Centerbridge transaction, correct?

A Again, I don't remember dates exactly, but let's call it early April.

Q Fair enough.

The company filed an amended plan with this court also in early April which incorporated the Centerbridge proposal, correct?

A Yes.

Q Okay. At that time the company and the Centerbridge Group along with, I believe, the bondholders entered into a plan support agreement, correct?

A Yes.

Q Okay. And ultimately the creditor's committee filed a joinder to that same plan support agreement, correct?

A Yes.

Q Okay. Now are you aware that the plan support agreement included what's commonly referred to as a no-shot provision, correct?

A Yes.

Q Okay. Did you hear Mr. Lauria in his opening presentation refer to the phraseology in that agreement that the Knighthead proposal could potentially leads to a superior proposal then the Centerbridge proposal. Did you hear that?

A You mean he's talking about the current Knighthead proposal?

Q Well I mean I was wondering are you aware how that no-shot works about, you know, the steps that need to be taken for the no-shot to be satisfied.

A I haven't memorized the provisions, Mr. Glenn, but I am generally familiar with (indiscernible). So I could have (indiscernible).

Q It is what it is?

A Yes.

Q It is what it is. It's not a memory test.

So are we agreed that the plan support agreement's no-shot provision generally bars the company and advisors from soliciting bids to top Centerbridge? You are generally aware of that?

A General characterization, yes.

Q Okay. And you are aware that even after that no-shot was agreed to that Knighthead and Certares continued to work on a modified proposal that would, in their view, top Centerbridge?

A Yes. I'm not sure exactly from the time of the signing the PSA and then hearing from them how long that was, but, you know, ultimately, yes, we have seen them. It has been communicated to us that they're prepared to do something more than the last proposal.

Q Okay. Did you see the proposal that Knighthead submitted on or about April 15th that we discussed in court last week?

A Yes.

Q Okay.

A The (indiscernible) was last Friday?

Q Correct.

A Thursday? Around there. I don't want to look at my (indiscernible) calendar to figure out what day that was because Mr. Zakia said I can't look at my devices.

Q I wouldn't mind. I honestly wouldn't mind. The dates are not hugely important.

So the proposal from last week from Knighthead provided for certain cash payments to the general unsecured creditors and the holders of the senior notes, correct?

A I am trying to remember. Yes, I believe that's right.

Q Okay. And those amounts were higher particularly in the general unsecured creditors case then the Centerbridge proposal that existed right before that offer came in, correct?

A I believe that's right, yes.

Q Okay. I believe in our numbers the enhancement to the general unsecured creditors was approximately $105 million cash recovery, correct?

A I would have said about $100 million. So, again, I don't remember the numbers precisely, but that sounds about right.

Q And to be clear, the proposal that we're talking about came in despite the no-shot provision in the plan support agreement, correct?

A Correct.

Q Okay. And did you conclude that the total enterprise value of the proposal last week by Knighthead was approximately $700 million higher than the Centerbridge proposals total enterprise value?

A I don't remember the increment, Mr. Glenn. I mean that sounds kind of the right ballpark, but I just don't remember as I'm sitting here. I didn't prepare for that particular question.

Q Fair enough.

Did -- you would agree with me that receipt of the offer contemplating a higher recovery to creditors was a positive development in this bankruptcy, correct?

A Yes.

Q Okay. And after that offer came in the company and its advisors reviewed it, correct?

A Yes. When we had time to go through everything, yes.

Q Fair enough.

So did there come a time when the company determined that the proposal from Knighthead on April 15th was a "bonafide expression of interest under the plan support agreement"?

A Yes. The company made that determination.

Q And the creditors committee also came to that determination, correct?

A I don't know whether I know whether they did or they didn't.

Q Were you involved in the negotiations with the creditors committee after the Knighthead proposal was submitted to the company last week?

A Well we had at least one call with the creditor's committee's advisors after the proposal. I wouldn't call it a negotiation. I just called it a call to discuss the proposal.

Q What did they tell you?

A My recollection of that call was we were going through questions and identifying issues to then have a consolidator response back to Knighthead, Certares.

Q Okay. And are you aware of the circumstances that led the Centerbridge Group to increase their distribution to the general unsecured creditors after the Knighthead proposal came in?

A The same circumstances you were, sort of, referring to, no. Each company has increased their proposal when they see what the other person has done -- what the other party has done.

Q And that is before anybody was awarded a breakup fee by this court, correct?

A Yes. No breakup fee has been awarded.

Q Okay. And the Centerbridge proposal was only increased in terms of the recovery to the general unsecured creditors in response to the Knighthead proposal, correct?

A I can't tell you the reasons why Centerbridge, Warburg, and Dundon did what they did. I think it would be speculation on my part because I wasn't told by them that's why they were doing it.

Q But you agree with me on the chronology that occurred after the Knighthead proposal came in, correct?

A Yes, I would agree with that.

Q And you worked with Centerbridge and Warburg before, have you not?

A Warburg not so much. Centerbridge, yes.

Q Okay. Hedge funds like that tend not to give away $100 million of value when they don't have to, correct? Is that your experience with these hedge funds?

A It is general proposition for any investor.

Q Thank you.

So Judge Walrath pushed the hearing to today so that your -- the debtors and their advisors could review the Knighthead proposal, correct?

A Correct.

Q And after that occurred you, in fact, along with White & Case and other advisors did review the Knighthead proposal, correct?

A Correct.

Q Okay. And is it correct that Knighthead and Certares were presented with a due diligence list from the company on Saturday, April 17th I believe?

A I believe it went out on Saturday, yes. I don't know if it's a due diligence list, or an (indiscernible) or a question list, whatever you want to call it.

Q Fair enough.

A list of open items?

A Or questions, yeah.

Q Fair enough.

A Relating to the proposal that we had received early in the morning on Friday.

Q Okay. And then there was a call on Sunday night among the debtors, Knighthead, and Certares that lasted two hours to discuss the list you have been referring to?

A Yeah, the list was the basic kind of foundation for the call. There may have been other -- I'm sure there were other things that popped up along the call.

Q Okay. Now after those calls isn't it correct that Knighthead presented another revised proposal to the debtors?

A Yes.

Q Okay. And isn't it the case that Knighthead and Certares have told the company they are willing to move forward without any breakup fee at all?

A I believe that was -- yes, that was communicated.

Q Okay. And isn't it the case that the revised proposal that was presented includes a 50 cent distribution to shareholders?

A It includes (indiscernible) cash (indiscernible).

Q Fair enough.

And isn't it the case that the company, in fact, was the party that asked Knighthead to do that in response to its proposal?

A I don't recall the sequence, Mr. Glenn.

Q Okay. You don't know why, as you sit here today, Knighthead included that 50 cent recovery to shareholders?

MR. ZAKIA: Objection, Your Honor. It calls for speculation.

MR. GLENN: I asked him whether he knew.

THE COURT: You can answer if you know.

THE WITNESS: I don't know.

BY MR. GLENN:

Q And are you aware that the revised Knighthead proposal contemplates a $1 billion rights offering to the shareholders

in the first instance and the bondholders if the rights offering amounts are not fully taken by the shareholders?

A Yes. My understanding had been that it was to the shareholders. If I heard it was not taken up (indiscernible) bondholders that's a detail I missed.

Q Okay. Now I want to talk to you about the euro loan briefly and then we'll go back to the latest proposal.

Did you hear Mr. Hessler indicate, in his comments, that Knighthead is willing to provide the company with committed financing to satisfy this issue with European liquidity needs?

A I did hear him say that, yes.

Q Okay. And isn't it the case that consistent with his comments Knighthead delivered and actual commitment letter on terms more economically favorable to the debtors?

A I am aware that Knighthead and Certares delivered a proposal. I am not clear that it was in the form of a commitment letter.

Q You don't know what the proposal is?

A Off the top of my head I don't, Mr. Glenn. I know (indiscernible).

Q Okay. Do you have any reason to dispute Mr. Hessler's contention that he did deliver a commitment letter to the company?

A I do not.

MR. ZAKIA: Objection, Your Honor. I was going to say the witness just said he didn't know.

THE COURT: Alright, overruled.

BY MR. GLENN:

Q Now you talked earlier in your testimony about the consequences to the company if that financing is not provided immediately. Do you recall that testimony?

A Yes.

Q I was a little confused by it and I just want to better understand it. So if that financing is not provided, say, until the end of next week can you identify any actual economic consequences to the company?

A Other than the general consequences I discussed before, and I don't know what I can say in court in terms of the expected liquidity and balance sheet next week. It will get tight and projections are projections, right. It's never -- it's rare that projections are absolutely right in terms of, you know, what ends up happening.

So, you know, there could be no negative impact or there could be significant negative impact if projections end up not being accurate and the cash balances are less than the company is anticipating because it's getting very tight.

Q Now --

A I guess it could be the company runs out of money.

Q Could be, but you don't know as you sit here today?

A I don't have a crystal ball.

Q Okay. Now is it your understanding that Centerbridge is tying the court's approval of that euro loan as a condition to it moving forward with the EPCA today?

A That's my understanding, Mr. Glenn.

Q Alright, so all things being equal as the company's financial advisor would you agree with me that it would be better for the company to move forward with financing that's not tied to a separate outcome on this EPCA?

A If we could get financing that we could place on as quickly as the one that we have in place on the form of an agreement that is fully negotiated and acceptable without ties then that would be better for the company.

Q Okay. Now, but -- strike that.

Going back to the Knighthead proposal isn't it the case that the revised Knighthead proposal developed after last week reduced the quantum of preferred equity from $2.5 billion to $2.1 billion for a reduction of $400 million through other equity financing?

A I think it was a little bit more than $2.1. It's like $2.1 something, but, you know, in that (indiscernible), yes.

Q Okay. Now isn't it the case, sir, that there have been multiple offers by both parties without any gaurantee of a breakup fee as we sit here today?

A Yes. We went through the history.

Q Right. Okay. Now isn't it the case as well that Knighthead has told you that it is willing to continue to work, to do work, to provide the company with an even better proposal?

A Better then what?

Q Well let's just -- let me backup. If Knighthead is willing to continue working with the company on resolving any issues with its proposal, isn't that correct?

A I can't speak of what Knighthead is willing to do or not willing to do, Mr. Glenn.

Q You don't know, as you sit here today, as the company's investment banker?

A Well I -- Mister (indiscernible) called me, but I don't know -- I am not going to characterize what Knighthead is prepared to do or not prepared to do. I mean they made a proposal, the rest would just be speculation.

Q Okay. But you are willing to continue to work with Knighthead on that proposal, correct?

A Absolutely.

Q Okay.

A I'm sorry, as long as we are complying with any restrictions and requirements that we have on the PSA.

Q We will get to that. Thank you.

Okay. But we just got a new proposal from Centerbridge. When was the Centerbridge proposal presented to the company, the one that was just filed with the court that provides warrants to the equity and the enhanced proposal to the GUCs?

A So when -- can you ask your question again?

Q Okay. So just to lay the foundation you heard Mr. Lauria present revised terms for the Centerbridge proposal which includes additional cash to the general unsecured creditors and warrants to be provided to the shareholders. Do you recall that?

A Yes.

Q Okay. When was that first presented to the company?

A I want to say last night. Sometime yesterday, I just don't remember when yesterday. I know I was up till about 12:30 last night. So it could have been sometime in the p.m. yesterday.

Q Okay. And when did the company have a board meeting to resolve to accept to that proposal?

A We had a board meeting this morning at nine o'clock.

Q So this is still an evolving process, correct, Mr. Derrough?

A It has evolved. I don't know if it's going to continue to evolve or not.

Q Okay. Now is it the case that one of the reasons why the company determined not to move forward with the Knighthead proposal is that it did not have committed debt financing, senior secured exit financing?

A That was one of the reasons, yes.

Q Okay. I'd like to talk about that.

So isn't it the case that Centerbridge did not have -- strike that.

Isn't it the case that the Centerbridge plan did not have committed exit financing until April 15th, i.e. last week?

A Well we have been running an exit financing process which was really independent. It was designed to be independent of who the sponsor was going to be. So it was being run in parallel with the sponsor process. Then the date in which we, essentially, got commitments that we -- I can't remember exactly, Mr. Glenn.

Q Okay. So when you said you ran an independent process what do you mean by that?

A We set up an exit financing process laying out our needs of the company, and trying to make it as neutral as possible from a sponsor perspective. You may recall that Knighthead, Certares initial was the sponsor. So we wanted to make it such that the exit financing process wouldn't be dependent upon one or the other so that we wouldn't be, sort of, overly favoring one or the other.

Q Okay. And isn't it the case that the company told Knighthead that a defect in its proposal was that it didn't have committed exit financing and those conversations occurred over last weekend?

A Well I think it's a more complicated narrative then just that, Mr. Glenn.

Q Well let's just make sure we isolate the point. Did the company tell Knighthead that a defect in its proposal was that it did not have committed senior debt financing?

A I don't remember whether those words were used, Mr. Glenn. You are probably aware that the exit financing facility allows us to pivot to Knighthead, Certares if the lenders believe that the structure is, essentially, you know, the same from the credit perspective. So I don't know -- I don't think I heard those words specifically.

Q Okay. So from your perspective it's not a problem that Knighthead does not have committed exit financing as we sit here today?

A Well the issue, Mr. Glenn, is that feedback we've gotten from the banks that we have lined up is that the deal, the structure that Knighthead, Certares has proposed isn't going to work for them. So, therefore, there is no committed financing if they don't believe it's (indiscernible) under the Knighthead, Certares structure.

So you could then take the next step and say well if Knighthead, Certares shows up with their own financing then that would neutralize that issue, but right now we have committed exit financing that we don't want to lose.

Q Okay. So did Knighthead endeavor to talk to the banks to see if they could obtain the exit financing that the company cited as a reason that the Knighthead proposal is inferior?

A Yes. They asked to speak to the lead exit lending bank that the company has been working with, as well as ask to speak to another bank that is not currently a party to the exit (indiscernible) that did participate in the process.

Q There were two groups of lenders that it tried to talk to; one was JPMorgan and the second is the existing bank group lead by Barclay's, correct?

A I'm not sure if you want to call them groups. I think they were just going to go on with Barclay's on the one hand and then JPMorgan on the other hand.

Q Okay. And to do that they needed the company's permission, correct?

A They needed the company's permission and I believe we needed to evaluate in terms of the PSA.

Q Okay. So --

A But they did speak to JPMorgan and Barclay's.

Q I understand that they only spoke to JPMorgan yesterday at 12:15. Is that consistent with your understanding?

A I don't remember what day is today?

Q I don't know. I don't know. Toda is Wednesday.

A I believe the JPMorgan conversation happened yesterday.

Q Okay. And this is, you know, four days after they submitted the original proposal, correct?

A The proposal came in Friday. So, yeah, approximately four days.

Q Okay. And when did this Barclay's conversation occur?

A Yesterday or today.

Q Okay.

A I believe it was in the last day or two. Again, I have to (indiscernible) because all the days are running together. So that is my belief.

Q Okay. Now there was a board meeting at 4:30 yesterday to consider the revised Knighthead proposal, correct?

A I think it was at four o'clock there was a board meeting yesterday.

Q So you're testimony is that those conversations were delayed because the company believed that permitting them might violate the no-shot provision we talked about with the Centerbridge Group, correct?

A Sorry which conversation are you referring to?

Q The conversations with the lenders.

A I don't know which provision went through, but I don't think, Mr. Glenn, that they asked to speak to the lenders until maybe Sunday or Monday. So it's not that they asked on Friday to speak to the lenders. It is my understanding. So you're making it sound like there was a much longer time period between the ask and it happening. But I know that it had to be run down in terms of what we -- whether there is any restriction under the existing agreements.

Q Isn't it the case that Knighthead has been asking to speak with the lenders for weeks?

A I don't know if that's the case or not, Mr. Glenn. I mean they wanted to speak to the lenders when they were the initial plan proponent and be part of that process. We said no. We didn't include Centerbridge and Warburg until much

later in the process. So I just don't know when they first asked for that, but, you know, as I said, we were running and independent process. The debtor wanted to maintain control of that and not have one party or the other highjack it.

Q Did you see a letter to the board of directors delivered by Knighthead last Thursday asking for permission to speak to the company's lenders?

A I know they sent a letter. I don't recall that particular element of it.

Q Are you aware of a letter delivered on Friday to Mr. Lauria in which the Knighthead Group reiterated the request to speak to the company's lenders to resolve this issue?

A I don't recall that specifically.

Q I have an email that might refresh your recollection. I would ask the folks at Morris Nichols if they could call that up somehow.

Judge, I --

MR. BARSALONA: Good afternoon, Your Honor. Joe Barsalona for the ad hoc committee. May I share my screen?

THE COURT: Yes, I think you are -- have that permission.

MR. BARSALONA: Great. Thank you, Your Honor. I'm going to bring something up right now.

(Pause)

MR. BARSALONA: Is that visible, Your Honor?

THE COURT: No, not yet.

Okay. Here we go.

BY MR. GLENN:

Q Okay. We put on the screen an email from Tuesday, April 20th from Mr. Lauria to distribution lists, including you, Mr. Derrough.

Do you see that?

A I do. It's hard to read. I don't know if you can make it bigger. I just need to get my glasses out of my coat.

Yeah, I can see it now.

Q Okay. And it says that in the third line down it says in part:

"The proposal is not fully documented and funded, such that it is capable of being accepted by the company in its present form."

Do you see that?

A Sorry. Where does it say that?

Q Okay. The first paragraph --

A Yeah.

Q -- right in the -- I'm just going to read this into the record so we get the full context. The second two sentences of the first paragraph, it says:

"In addition to certain substantive and structural issues, which we've discussed, the proposal is not fully

documented and funded, such that it is capable of being accepted by the company --"

MR. GLENN: If you could uncover that for me.

BY MR. GLENN:

Q -- "in its present form. Another issue is that it doesn't include the debt financing needed to make it viable."

Do you see that?

A I do.

Q Isn't it the case, sir, that that's the first time that the company told the Knighthead Group that the lack of exit financing for its proposal was an issue?

A I think what Mr. Lauria is saying here is that based upon what we have heard from the exit lenders, it doesn't work. And unless you have an alternative source of funding for the exit, it's not viable.

I think that's what he's trying to say here -- you'd have to ask Mr. Lauria specifically -- but I think that's what he's trying to say. We heard from Barclays on the Monday morning after. So the sequence would have been we got the proposals in the middle of the night or the details in the middle of the night Friday, we had the hearing Friday.

We then get on the phone, White & Case and Moelis went through what we knew of them at the time, created an issues list, had a long call on Saturday morning to go through it and make sure they all understood where we were, had the call

with the UCC, then sent that out.

I believe, unless we misunderstood it, it went to the exit financing banks, the lenders, so Saturday night, and I believe we heard by Monday morning-ish, that the banks -- that Barclays -- three banks' reaction was negative in terms of its feasibility on the exit financing. So, I think that's what Mr. Lauria is referring to.

And we communicated that feedback, what we were hearing, to Knighthead and Certares on Monday. That's my recollection.

Q Okay. I don't think you answered my question.

The question is, is this the first time that the company told Knighthead that the lack of exit financing was an issue for its DIP, yes, or no?

A I don't know.

Q Okay. And then --

A Well, hold on a second -- Mr. Glenn, I mean, lack of exit financing. If the exit financing that we had to wind up isn't available, then I guess there's a lack of exit financing.

And, as I said, I believe we communicated to the folks at Knighthead and Certares that we were getting negative feedback, and that's why I guess you could probably say it was probably Monday that they were hearing it.

Q Okay. Now, it says here in the next paragraph -- and I

won't read this into the record, but you can disagree with me if I'm wrong -- that here, the company is telling Knighthead that it needs permission to speak to JPMorgan, because it remains bound by an NDA.

Do you see that?

A Yes.

Q And that's an NDA with you, for your process that requires all those communications to go to the company, correct?

A Correct.

Q Okay. And it says they also sought permission to speak to Barclays, who is also bound by an NDA.

Do you see that?

A Yes.

Q And that's the same NDA that requires all these communications to go through you, correct?

A I mean, I don't know if each of the NDAs are exactly the same, but substantively.

Q Thank you.

Now, you testified before that the Barclays financing may not be credible to the Knighthead proposal, do you recall that?

A Yeah.

Q But that doesn't mean that Barclays is refusing, categorically, to provide exit financing to Knighthead,

correct?

A Correct. We've not heard categorically, that they were refusing, no, not those words.

Q Okay. Now, you're aware that the Knighthead proposal is backed by approximately $5 billion of equity commitments, preferred by preferred plus (indiscernible)?

A Generally, yes. I mean it's about that number.

Q Okay. And we know that Knighthead and Certares are in that deal, but Apollo is also providing over $2 billion of financing, correct?

A Correct.

Q And all of this $5 million of debt would be subordinated to the senior debt that Knighthead has proposed, correct?

A I'm sorry, I think -- can you just -- (indiscernible) and equity in (indiscernible).

Q I'm sorry. Let me rephrase.

All of this equity, the $5 billion of equity, is going to be subordinated by its nature to the senior debt that Knighthead needs to consummate its transaction, correct?

A Well, you say Knighthead needs -- the company needs to exit, I would say. The proposed exit defendant facilities, the equity that's being proposed would be subordinate, yes.

Q Right. And it would be insurance company for investors to spend all this time to provide $5 billion of equity

financing if they didn't believe that raising $1.3 billion of senior secured financing was unachievable.

Would you agree with me on that?

A Well, it's not 1.3. It's 1.3 billion in the term loan and 1.5 in a five-year committed revolver. So, it's 2.8.

And this is a proposal. They're not funding, taking the risk, you know, whether or not the banks fund or not. It's their own -- it'll only come in if they could exit. So, I'm not sure that your same impression makes sense in the context.

Q Well, I mean, you test --

A (Indiscernible) your questioning in saying, I think you said there would be a debt (indiscernible), just to be clear.

Q Yeah. I think the (indiscernible) stands.

But you testified on your direct to Mr. Zakia about the frothy capital markets that we're all going to benefit from, do you recall that?

A Yes.

But, Mr. Glenn, it was in the context of being concerned that the frothiness may go away.

Q That may be true, but that frothy market is equally available today to Knighthead, correct?

A If it were frothy today, the frothiness should be available to anybody, with the *caveat* being that structure does matter, capital structure does matter.

Q Okay. Is it your testimony to the Court, to Knighthead, to Certares, to Apollo, to Oaktree, and other members of our group, that they are not going to obtain the exit financing they need to consummate the Knighthead proposal?

A No, that's not my testimony.

Q So, can you identify for me, and the parties in this case, other than the lack of exit financing, what other issues has the company considered as to why night is not the superior proposal today.

A Well, we don't have full documentation yet, Mr. Glenn, about -- and it was Mr. Zakia, not Zakia, just for the record, at least to the -- but we don't have full documentation.

And I know we mentioned this before, but until you have that, you don't really know what everything is. So, and, you know, I didn't count the pages, but I think there's thousands of pages of documents, probably, that have been filed that were fully negotiated through, you know, multiple law firms and lots of eyes to get the Centerbridge (indiscernible) deal where it is.

We don't have that yet from the Knighthead and Certares folks, and so, on an apples-to-apples basis, we don't have equally actionable options at this point.

Give me one second. I've got to change the plug on my

iPad here, so bear with me for a second.

(Pause)

THE COURT: Any further questions, Mr. Glenn?

MR. GLENN: Oh, yes. I'm sorry, I thought we were waiting for him to --

THE COURT: He's done.

MR. GLENN: Okay. Thank you.

BY MR. GLENN:

Q So, the Centerbridge proposal is actionable unless the Court doesn't approve the EPCA and the break-up fee by May 1st, correct?

A That's my understanding.

Q Okay. And can you identify any harm to the company by waiting between now and that May 1st hearing for Knighthead to resolve any open issues with their proposal?

A Well, we talked about funding Europe, so if we're going to ignore that issue, I mean, that obviously is an issue, I'm not an expert in the sequencing of things that have to happen in terms of the agreement and putting it in place of (indiscernible) system, blessing it by the Court, and it goes into place.

I think the biggest issue is Europe and then, of course, just the certainty that we are moving forward. I'd have to think about, Mr. Glenn, whether it would have any impact on getting the exit financing committed at this point,

to think about that.

And what I don't know, Mr. Glenn, is when we would come back to change, let's assume that we did that, today is Wednesday, and the -- what day is today, the 21st? -- that gives us nine days to fully document something else. I mean, if it was longer, that document (indiscernible) the deal we have on the table.

I just don't know when would we come back here?

Q My question is (indiscernible), I'm just asking for the company and its business. I know we have time frames to deal with, with the Court and, otherwise, but I'm just asking you, from the company's business perspective, can you identify any specific harm to the company if the Court waits to grant the break-up fee until the operative deadline, given by Centerbridge under its own plan support agreement and EPCA and that the company agrees with?

A I mentioned Europe. The other issue, and I'm not an expert in the noticing and calendar provisions under the Bankruptcy Code and the Local Rules, but it would delay our commencement of solicitation. And my understanding is that that would, could very well -- I don't know all the details -- but push out the confirmation hearing, potentially pushing it out beyond the end of June. Again, I'm not an expert in, you know, what's required solicitation days and things like that, but, you know, pushing it out into July,

then (indiscernible) going out into July, that's going to impact the calendar of the business that we talked about. It will make it certainly messy from an accounting perspective. You know, we'd be better to close at the end of the quarter.

And then, you know, we've talked about just, a general uncertainty, you know, for (indiscernible). The longer you push things out, you push things out. I don't know the snowball effect on all the other timing requirements in bankruptcy, but, again, it's safe to say it's probably not going to be a better timeline; it'll be a worse timeline.

MR. GLENN: Your Honor, let me have a minute, with your indulgence, just to double-check my outline, and then I'll conclude.

(Pause)

MR. GLENN: Your Honor, that concludes my questioning.

THE COURT: All right. Does anybody else wish to cross-examine Mr. Derrough?

(No verbal response)

THE COURT: I hear none.

Mr. Zakia, do you want to redirect?

MR. ZAKIA: Quickly, Your Honor.

Before I begin, I'll thank Mr. Glenn for proving that I'm not the only lawyer that sometimes misestimates how long my examination will take, so I'm glad I'm in good

company in that one; notwithstanding the fact I've been wrong before, I will endeavor to be brief.

REDIRECT EXAMINATION

BY MR. ZAKIA:

Q Mr. Derrough, you testified during cross-examination concerning the fact that Knighthead and Certares had recently indicated that its current proposal would be going forward without a break-up fee.

Do you remember being asked those questions?

A Yes.

Q Now, Knighthead and Certares was, as I believe you also testified, the original plan sponsor that the debtors initially selected when they filed their original plan, right?

A Yes.

Q Did that deal include a break-up fee?

A Yes, it did.

Q And then, again, and then you testified this on both direct and cross, when the company pivoted to the Centerbridge deal, that also, the company agreed to pay a break-up fee as part of that agreement?

A Yes.

Q And, obviously, because the company was in bankruptcy, all that was always subject to court approval?

A Correct.

Q And I believe Mr. Glenn asked you about whether the competitive activity which occurred with the various back-and-forth and different bids, all occurred before the Court ultimately ruled on the break-up fee, which we're asking the Court to do today, right?

A Correct.

Q Did that activity occur after the company had agreed both, with originally with the original sponsor Knighthead and Certares, and then subsequently with the new sponsor group, to pay the break-up fee?

A Yes.

Q Okay. And you talked about European financing and the importance of that. I just want to be clear, as we sit here today, the company -- does the company --

A Mr. Zakia, I'm sorry. Just to be clear, since all the activity happened after the company agreed to pay a break-up fee, we did have a period where we were running the three groups against each other before picking Knighthead and Certares and agreeing to a break-up fee with them. So, there was activity before they agreed to the (indiscernible), although everybody was asking for one, I understand.

Q Right. But all of the negotiations occurred after the first plan and all -- the original pivot and then these new proposals and then the improvement on the proposal. (Indiscernible) talking about the back and forth recently,

all happened after the company had agreed, subject to court approval, to pay a break-up fee?

A Yes.

Q Okay. As we sit here today, does the company have fully executed documents which are ready for an immediate closing with the existing sponsor group, with respect to the European (indiscernible)?

A Yes.

Q Does the company have fully executed documents that are ready to close for the European financing with the (indiscernible) Knighthead and Certares Group?

A Not to my understanding.

Q Does that matter?

A I'm sorry?

Q Is the existence or lack thereof of fully executed documents with regard to the European transaction, is that important?

A Yes, I want to say maybe the opposite. It's very important to have fully executed documents that you can close upon. Not having -- if we didn't have that, then we wouldn't know that we have financing available. It's always subject to final documentation.

Q Which doesn't existing in the case of the Knighthead and Certares proposal, which you were just asked about on cross-examination?

A Correct.
Q Same question with regard to exit financing, the current plan, the proposal put forth by the current sponsorship group, fully committed exit financing as we sit here today?
A Yes.
Q And is that the case with regard to the Knighthead and Certares proposal?
A If it's not fully documented, then there's no way that we could execute, no.
Q You were asked a number of questions about Knighthead and Certares' ability to speak to Barclays and JPMorgan.
Do you remember those questions?
A I do.
Q I just want to be clear, I think you said this, but did those discussions, did the debtor provide its permission for those two occur?
A Yes.
Q And did those discussions, in fact, occur?
A To my knowledge, yes. I was not on those calls, but I think that my colleagues were.
MR. ZAKIA: I'm sorry, Your Honor. Just one second.
(Pause)
THE WITNESS: If you hear anything in the

background, Mr. Zakia, the thunderstorm appears to be making its way from Wilmington to New York.

BY MR. ZAKIA:

Q So, let me ask a couple other questions.

You were asked a number of questions (audio interference). Mr. Glenn asked you whether the lack of exit financing was a factor that caused the company to judge the Knighthead and Certares proposal to not be superior to the existing proposal.

Do you remember that?

A I remember that part of the conversation, yes.

Q And I believe your answer is, that was one factor?

A Yes.

Q Could you describe for the Court were there any other additional factors.

A Well, to the point that you were just going over, that if we didn't have full documentation at that point, I think what we had -- I mean, it's been moving around a lot, but in the most recent round, we got a couple, you know, presentation slides outstanding the proposal, and so it's not actionable on its face right now in the same way the Centerbridge transaction is actionable.

There's -- you know, some details have moved around a bit in the last few days. So, like the point that Mr. Glenn made that the rights offering wouldn't be available in the

second instance to bondholders, was not my understanding, certainly, a day or so ago, and that's changed.

The point that I'm making is that the details continue to change a little bit, and so, by definition, it's not actionable if we don't have the details.

Q Okay. Now, after you compare the Knighthead and Certares proposal, the most recent one, to the terms of the current plan, the terms of the current plan, which Mr. Lauria described to the Court this morning, with regard to the recovery to equity, do you have a view as to which of those proposals is currently superior?

A So, the -- I'm sorry, I'm just looking at the thunderstorm out the window -- I happen to be in a room where, fortunately, this is the first time I've seen it where this has happened, but I'm three feet from the window.

As Mr. Lauria had described, we ran a Black-Scholes valuation on the warrant structure that the Centerbridge Warburg bondholder group proposed. And we think the range of value, it's from 91 to maybe $100 million, and though, if you ascribe that value to that warrant package, and that it's going to all shareholders, you know, that would appear to be greater in value than the cash, the 50-cent-per-share amount that the Knighthead and Certares Group is proposing.

Q You said on cross-examination that structure matters with regard to the finance ability of a proposal. Could you

explain to the Court what the difference is in structure between the current plan and the proposed Knighthead and Certares plan and how that may or may not impact the ability to finance.

A The biggest -- I mean, it moved a little bit from what we saw on Friday to what we have today in terms of where debt would be placed from Friday to today, within the corporate structure.

But the biggest full difference is the preferred stock instrument, you know, coming from Apollo. We'll call, I think Mr. Glenn said $2.1 billion, so I'll say 2.1 billion.

It does have features of it that people believe may impact the credit rating of the company coming out negatively.

And so all things being equal, that's going to make, at least, the exit DIP more (indiscernible) if it is achievable. So, when I say structure matters, it's that element of the proposed structure. We don't know what massaging they're prepared to do, to address those kinds of issues if those issues remain with the exit banks.

Q Did the Knighthead and Certares proposal, as currently structured, include any fees that are different than provided in the existing plan structure that may be problematic?

MR. GLENN: Objection, Your Honor.

This was not brought up on my cross,

(indiscernible).

THE COURT: Yeah, I think we are getting beyond the scope of the direct.

MR. ZAKIA: Well, with that, well, Your Honor, I will always take the Court's hint and I will stop.

No further questions. Thank you.

THE COURT: Mr. Glenn, anything further or are we done with the testimony?

MR. GLENN: I'm sorry, I was on mute.

Just one last question or two, Judge.

RECROSS-EXAMINATION

BY MR. GLENN:

Q You testified, Mr. Derrough, before, that the Black-Scholes valuation analysis was in the ninety-million-dollar range, and that that was superior to 50 cents being offered to shareholders.

Do you recall that?

A I said it would appear to be if there was around 90 million bucks and I believe that 50 cents is around 75 million.

Q Okay. But shareholders, under the Knighthead proposal that you acknowledged, are getting rights to subscribe to a billion dollars of equity in the Knighthead proposal, in addition to that cash, correct?

A That's my understanding. We haven't seen all the

details, but that's the understanding, yes.

Q Okay. And do you understand that that would amount to approximately 28 percent of the reorganized equity of the company?

A I haven't done that math, Mr. Glenn. It sounds about right. It sounds like in the right (indiscernible).

Q Thank you.

MR. GLENN: Nothing further, Judge.

THE COURT: All right. Thank you.

All right. I think we're done with Mr. Derrough?

MR. ZAKIA: We are, Your Honor, and Mr. Derrough was our only witness, so at this point, the debtors rest.

THE COURT: Thank you, Mr. Derrough.

(Witness excused)

THE COURT: Does anybody else want to present any testimony?

MR. GLENN: We do not, Judge.

THE COURT: All right. Then I'll close the record.

Since we're beyond the two o'clock hour for the disclosure statement, I want to pivot, to use all your terms, pivot to see if the U.S. Trustee had had a chance to look at the disclosure statement changes?

MS. RICHENDERFER: Yes, Your Honor. I did, Your Honor. And I got the thunderstorm before you did, because

I'm up in Chester County, so, the thunderstorm has already been through here.

(Laughter)

MS. RICHENDERFER: Yes, and I do appreciate the Court rearranging things, and I was able to get through all of the blacklines and I do appreciate debtors' counsel sending them to me directly.

And, Your Honor, I have no comments or questions on the revised documentation in the form or the disclosure order and the ballots and the disclosure statement, itself, that have been put in front of the Court for approval today.

THE COURT: All right. Thank you.

All right. Then I'll hear argument on the EPCA issue, if I need anymore.

Who's going to speak for the debtor?

MR. LAURIA: Thank you, Your Honor.

Tom Lauria from White & Case for the debtors. I will try to be brief here, because I think a lot of it has been said or addressed one way or the other.

I think that with respect to the Court's consideration of whether or not the EPCA should be approved, including the break-up fee and the expense reimbursement, there are really only three issues to consider: one, whether or not the entry into the agreement, including the break-up fee and expense reimbursement, constitutes a proper exercise

of the debtors' business judgment; two, whether or not the size of the break-up fee is appropriate; and three, whether or not the payment of break-up fee constitutes a reasonable and necessary expense of the administration of the Chapter 11 case, such that it is appropriate to be treated as an administrative expense under the Code.

With respect to inquiry number one, whether or not the entry into the EPCA constitutes a proper exercise of the debtors' business judgment, I think that the record that has been made makes something extraordinarily clear. That these debtors have, at every juncture, through a process that's been quite difficult and complicated, been very careful and thoughtful in the way they made decisions and the way they shepherded the process forward to a place that is unquestionably a very capable place for the estate and its stakeholders.

Just considering the fact that we have a plan today that unimpairs all the senior creditors, administrative and priority claims, that is supported by 87 percent of the holders of funded debt claims, and that will pay 100 cents on the dollar to the general unsecured claims, garnering the support of the official creditors' committee, and as further modified, provides a recovery to shareholders that is, at this time, valued at roughly 60 to 70 cents per share.

The process was competitive in getting here. All

bidders required a break-up fee and the reward to a party who actually got to definitive documentation, and there's only one party who's done that, the Centerbridge Group, together with the bondholders, have gotten the definitive documentation regarding their commitments and their financing, and all of the terms on which the plan would be implemented going forward, is that you get to be the stalking horse. That establishes the floor and that provides great security to the company. We know that whether or not we can get to a better deal, and we hope, always, to get to a better deal, we know that we have a deal that we can carry-forward to the finish line, provide stability and structure, and it takes risk off the table.

And as debtors-in-possession, we're akin to being a trustee, and the trustee's primary job is to not be at the roulette wheel, to mitigate risk, in connection with its efforts to maximize value. And I think the record makes clear here that that's precisely what these debtors have done through this process of identifying sponsorship and then negotiating and working the various competing parties to a place where we have now, one definitive, actionable transaction.

With respect to the appropriateness of the amount of the break-up fee, the testimony is, and the record makes clear, that it's a 3 percent fee on the total amount of the

equity commitment, roughly a 1.2 percent fee on the overall size of the transaction, based on a $5.5 billion total enterprise value. This is completely consistent with past precedent and break-up fees that have been awarded in other cases, which have been as high as 10 percent in some cases, 6 percent. Three percent is, I think, something the Court can view as being squarely in the range of what is appropriate.

And with respect to the third question, whether or not the break-up fee clears the burden of being an administrative expense in these cases, the record makes clear, and the contract, itself, makes clear that the break-up fee is only payable from the proceeds of an alternative transaction that closes. This is consistent with Third Circuit precedent of the appropriateness of avoiding a break-up fee as an administrative expense.

I'd like you to turn to precedent for just a moment, and I won't cite unpublished decisions in Delaware, which I know the Court disfavors --

(Laughter)

MR. LAURIA: -- but I will cite two published decisions out of the Southern District of New York: the Integrated Resources case, 147 B.R. 650, and Metaldyne decision at 409 B.R. 661. In both of those cases, an active, ongoing bidding process was continuing when the debtor went to the Court for approval of a break-up fee in favor of the

bidder who, at that time, had the superior proposal.

In both of those cases, the Court noted that the break-up fee should be approved, even though the process in the case of Integrated Resources was, in the Court's own words, far from over, and that there was a clear desire for further bidding. The Court concluded that the fee was reasonable and it was appropriate to provide structure for the process going forward and protection of the downside.

Similarly, in Metaldyne, Judge Glenn observed that there was no evidence that the fee will hamper bidding, that by approving the stalking horse bid, a floor was set and a structure would be established for future competing bids.

Both those cases are on point to our current circumstances. I'd also like just to discuss for a moment, a couple of cases that have been cited by the ad hoc equity group: O'Brien and Reliant Energy.

In O'Brien, the decision as to whether or not to award a break-up fee was addressed by the Court after the bidding had completed and the bidder seeking the break-up fee had already proved to the Court that the break-up fee was unnecessary because they were willing to continue through the process without the break-up fee's protection.

And in Reliant Energy, the Third Circuit was clear to say that there is no per se rule against the break-up fee, but there, the break-up fee was not awarded because the

bidder did not require that the break-up fee be approved. The bidder only required that the debtor seek approve of the break-up fee. The Court, there, held that that showed that it was not necessary to continue the bidding process and to preserve the stalking horse bid.

So, Your Honor, we are at juncture in this when the debtors are truly ready to emerge from Chapter 11 and we're doing so at a moment in time when the markets, according to the company, are very favorable to the company. And we have, as a Board, already decided that we have a competing proposal that may, in fact, with further work, become a superior proposal.

And, as I think the record demonstrates by the debtors' past ability to have freely pivoted from one transaction to the other, based on its determination of which was superior for the estate and its stakeholders, that's something that we can do again and I can assure the Court that the Board is committed to making sure that it gets the best outcome for the company and the stakeholders.

We are prepared to include language in the disclosure statement that makes clear that we will do that. That makes clear that we are committed to pursuing the best outcomes for the company. And that we will rely on Bankruptcy Rule 3019 to go forward with a pivoted transaction, if, in fact, we get to one. And, by definition,

a pivoted transaction, at this point, is going to be one that only improves the treatment of our stakeholders, including, in particular, the shareholders.

So, for those reasons, Your Honor, I think it's appropriate to approve the EPCA, including the break-up fee and expense reimbursement, and to, then, turn to the disclosure statement, approve it, and let's start moving this process towards everybody's five chapter of Chapter 11, the end.

THE COURT: Thank you.

Mr. Glenn?

MR. GLENN: Yes, Judge.

I think this is a tale of two things: what the argument is, which is what the record says. I'd like to start with Mr. Lauria's point about whether Centerbridge should be "rewarded" for getting to the definitive documentation first.

That is certainly not the standard. The standards for break-up fees are not that you've done good work, okay, not that you can move the fastest; it's whether the expense satisfies the relatively straightforward analysis in Section 503 of the Bankruptcy Code, that is, that it's an actual, that it's a necessary cost or expense of preserving the estate.

Second, we heard Mr. Lauria articulate that the

break-up fee should be approved under a business judgment analysis. I think that if the 503 analysis is not satisfied, the business judgment is not applicable.

But even if it is, tellingly absent from the record today is any record of what the Board did in this case. You heard Merrill opine that it's his view that the break-up fee would be better for the estate than not. But we didn't hear the Board deliberations. We didn't hear what the facts and circumstances that the Board heard to come to exercise their business judgment. We didn't even hear from the CEO or the CFO.

And so, if we're talking about a business judgment standard, I would ask the Court to search the record to see where that business judgment is in the testimony that Mr. Derrough provided or that the record has put forth before the Court.

I think we're in very dangerous territory still, and that territory is this, we have a May 1st deadline, okay. I think that is in the record. If we were here on April 30th, I think the Court would have a more straightforward decision, because at that time, there would be something actually to lose. There is nothing to lose today.

Now, we heard a few things that drive the timing. Number one is this Euro financing. We heard Mr. Hessler tell

you that he's given a commitment letter to the company. We heard Mr. Derrough say that he hadn't even heard about that, which is problematic in and of itself. Be that as it may, there's no evidence in the record of what might happen to this company if that financing waits for next week, other than speculative, unfounded assertions that weren't really clarified by Mr. Derrough.

And I think we can tell what's happening here. Centerbridge is using that as, you know, importing its position (indiscernible) as leverage, okay. And they use the plan support agreement as leverage, because at the end of the day, Mr. Lauria conceded that our proposal, the Knighthead proposal could lead to a higher and better offer.

You saw the document. You heard Mr. Derrough testify that there were two defects with the Knighthead proposal today, not April 30th -- today. The defects are the documents aren't done, although we dispute that. They were given a full EPCA last week with financing. And, number two, that on the bank financing side, which we don't have, there are structural impediments that have been put in place, rightly or wrongly, that have stopped Knighthead from getting across that finish line. And the company was party to that structural impediment.

Informal, in these cases, you can talk to your financing parties, because everybody's best interest is in

getting the best deal. These professionals chose to have all roads go to them, and then they chose to erect roadblocks for other people to talk to them, and we've heard that the PSA parties had to get consent for Knighthead to get their financing.

So, I think the problem here is that we're seeing the process, the break-up fee, the lack of access to Knighthead, and these, what I would say, artificial deadlines, as being structural impediments to maximizing value, rather than assuring that we have the proper floor with the maximum value, then, in place.

It seems to me that if Your Honor were to approve the break-up fee today, and I don't believe that that's the case that it should be approved, because the record is abundantly clear that in the last week, there have been a series of offers, counter offers, and the last offer occurred as late as last night. It was approved by the Board only this morning. So the auction process, Judge, is still underway.

And that is a problem under the Reliant Energy case, and it goes back to O'Brien. And I litigated Reliant Energy case in the Third Circuit and I lost. I lost. I represented Kelson in that case. Kelson did not put in a condition to their transaction that the break-up fee be approved, only that it be sought.

But more importantly, there was another party standing in the background, ready to provide more value with no break-up fee. And you heard Mr. Derrough say today, Judge, that Knighthead is willing to move forward without a break-up fee. So, at the end of the day, where you have a competitive auction, where the parties continually outbid each other without the benefit of a break-up fee, those are the circumstances, as of April 21st, 2021, that a break-up fee should not be approved.

So, the other thing that I think was telling from the record is that there's no testimony, despite the fact that Centerbridge has continued to bid up the assets in response to our proposal, and I think we deserve the benefit of the doubt for that. We brought more value to this estate by coming forward with our higher offer and that's resulted in tangible value to the general unsecured creditors, tangible value to equity holders.

But you didn't hear Centerbridge say that they're walking if you don't approve the break-up fee today, because they can't. They're bound until the 1st, and there was no testimony at all that they were going to walk away if you didn't approve it. Why?

Because this is a great deal. This is a phenomenal deal. You have a company that is so well-poised, so well-positioned to benefit from the recovery that we are

experiencing now, and that everybody wants to profit from.

And so, while Ms. Strickland said before that this is not a tug-of-war, it absolutely is a tug-of-war, okay; whether the equity gets 28 percent of the upside of the business going forward, options and warrants in coming out. Equity is now the fulcrum security. There is no other way to look at this.

So, what I would urge the Court is to go back to Ms. Caton's words last week. She was very persuasive to you, as an estate fiduciary, when she told you, not now. Let this play out. They're not obligated.

And she cited what I told you, which is that if you put in the break-up fee and the bids don't improve, her ox is going to be gored by that. Today, the equity's ox is going to be gored, if you approve the break-up fee.

So, I would respectfully submit that the break-up fee should not be approved today. It may never be approved if we can prove to the Court and other stakeholders, we're highly confident that Knighthead can get over the finish line, if it's allowed to, and I think the best course of action today is to deny the break-up fee, or at an absolute minimum, give us until April 30th to do the all these Is and across all these Ts, so that any issues that are an impediment to arguably being the stalking horse, are removed.

And we're going to need the company's cooperation

and we're going to have to move very quickly, but I think, given everything you've heard today, that that would be the most prudent course to pursue.

Thank you very much for your time. That concludes my remarks.

THE COURT: Okay.

MS. STRICKLAND: Your Honor, may I be heard?

THE COURT: You may.

MS. STRICKLAND: Thank you, Your Honor.

For the record, Rachel Strickland, Willkie, Farr & Gallagher. I am reminded by, one, a book that my kids really liked, which is called, If You Give a Cat a Cupcake. And the second line is, that if you give a cat a cupcake, next, he'll ask you for some sprinkles. I don't know if you know the book. It's a good one.

On Friday they said, we just need a few more days, Your Honor. We give it to them. Here we are. It's Wednesday. We gave it to them.

Now, they're saying, now we want some sprinkles. We need more time.

I'm a little confused, frankly, because Mr. Glenn keeps referring to the Knighthead and Certares proposal as "our proposal," when he started in the beginning saying, we're thrilled, you know, whatever equity ends up with, if they end up ever being in the money, it's great for him, but

I'll leave that to the side.

The risks of delay are not borne by outside investors that aren't in the capital structure. They're not borne by Centerbridge, by Warburg, by Knighthead, or by Certares. With respect to Knighthead and Certares, those folks have three options if there's a delay. They get to walk if something bad happens to Hertz tomorrow or next week.

The risk to my client, with several billion dollars at stake, is not great, and they don't get to walk. So my capacity as the counsel to the lion's share of the creditors in the case, we are asking for no more display. The record more than substantiates the debtors' business judgment and that is clearly the standard here.

And in my capacity as counsel for the plan sponsors, who are funding billions of dollars in new capital to put their money where their mouth is, the break-up fee and expense reimbursement is part of the deal. It is necessary.

My client's capital isn't an option; it's committed. My client's requirement to fund the Euro loan today isn't an option; it's committed.

We didn't show up with a three-page deck and we've been in this as long as everybody else. And we showed up with everything with showed up with, because the company made us do it, and we play by the same rules as everyone else.

So, I hear the cat and the cupcake saying, well,

if only we had had more cooperation, if only we had been given to this party or that party. We got the same rules. We didn't have unfettered ability to talk to exit lenders; the company controlled all that process equally for everyone.

The company's Board met. They looked at every piece of paper they had in front of them, every analysis, everybody's advisored up the yin-yang, as you can see. The company and their Board made an informed decision. They've come to you exercising their business judgment, and we support that, because leaving aside the plan sponsor hat, the company owes our clients a lot of money. We are not out of harm's way. They are running a travel company in the midst of a global pandemic.

We are not home free, so the equity should not be -- they should be cautiously optimistic, but they should be cautious, and our clients stand to lose the most. So, Your Honor, I would ask that we say no to the sprinkles and the cherry on top and everything else, we approve this.

Parties are legitimately interested in this company, which everyone seems to be, they'll be back. This won't be an about the break-up fee, which is not exorbitant. It's not out of market. If anything, it is lean, yet necessary and appropriate.

Thank you, Your Honor.

THE COURT: Thank you. Anybody else?

MR. MAYER: Yes, Your Honor.

Tom Mayer for creditors' committee. My partner, Amy Caton, had to step out.

I won't burden the record. We join with Ms. Strickland and her clients in support in the approval of the (indiscernible).

THE COURT: All right. Thank you.

Anybody else?

(No verbal response)

THE COURT: All right. Well, then let me rule.

First, I agree with the Knighthead -- well, the ad hoc equity committee that 503 is not the appropriate standard, but that shouldn't -- that the business judgment rule is not the appropriate standard and that 503 is the appropriate standard.

But let me make a comment, as I follow-up to some comments I made last week. Based on the testimony and the comments and arguments of counsel, I think it is clear that the debtor is acting in its full fiduciary duty, in compliance with its fiduciary duty, and in compliance with Delaware's enactment of the business judgment rule. So, my comment that that is not the standard does not suggest that the debtor does not meet that.

In evaluating the break-up fee and expense reimbursement, which I understand is really the crux of the

objection to the agreement, which is the subject of this motion, the debtor does have to establish it's an actual and necessary expense of the estate. And while in the O'Brien case, the Court did not approve that fee until after the auction process, I think the courts have made it clear that that is not a necessary requirement, that we wait until the end to approve any break-up fee.

And many courts have held that there is value to having a fully committed deal on the table in order to attract other bids and get other bidders to improve their bids. It benefits the estate. It is not just to take risk off the table. It sets a floor and encourages others to bid.

And I note that the Center -- that the current bid has already gotten (indiscernible) in the Knighthead bid. There could be an argument that the Knighthead bid has improved the current bid, as reflected in the revisions this last week. But I think it is significant that the Knighthead bid is not finalized. Even though that party says it's ready to go, it is not finalized, and there is, again, value to having a fully documented and committed deal.

Other factors the Court considers is whether bidders, all of the bidders in the process have asked for a break-up fee and expense reimbursement, similar to that, that I'm being asked to consider. And in this case, the parties all did, initially, request both of those and in amounts that

are more than what the debtor was able to negotiate as the (indiscernible).

And Mr. Derrough in his declaration and somewhat in his testimony, made it clear that 3 percent, while it is an unusual percentage of a break-up fee in 363 sale cases, is less and sometimes half of what similar equity deals are seeking and have been approved by the courts and committee to providing commitments for a plan of reorganization process.

But like 363 deals and other equity proposals, this break-up fee is not due just for bidding. It is due and payable only if a better deal is consummated by the debtor. And the courts have been clear that that is the necessary requirement, and I find it is met here.

While the Reliant case did not okay the bid, I think this is distinguishable.

Again, the Knighthead bid, while Knighthead had been involved in the process, is not fully committed, fully documented, and ready to go today. And given the debtors' business requirements, both with respect to its European operations and with respect to getting itself in a position to exit from bankruptcy in a timely fashion, that supports its projection and, thereby, results in value for the stakeholders who will remain in this case and who are due to be paid in full, in cash now, those parties represented by the creditors' committee, I think that it is necessary to

approve the break-up fee at this point in the process.

I appreciate that all of the parties, including Knighthead and Centerbridge, have been working around the clock, and it's not just Mr. Lauria, who had bags under his eyes, I appreciate that all the parties are working to exit Chapter 11 in a manner that is beneficial to all of their respective clients.

But I think we are at the point, I did give the parties, I gave my head an additional week to try and get itself to a position that would convince me otherwise, but I think I am prepared to approve the EPCA, as the parties are referring to it, including the break-up fee and the expense reimbursement. And that is with the *caveat* that the debtor has been complying with its, and will continue to comply with its fiduciary duties, but I see absolutely no evidence that the debtor will not be fully prepared to pivot to another proposal that is a higher and better deal for all of the constituents, that in its fiduciary duty, is now obligated to represent. So, I will enter an order approving it.

And with the U.S. Trustee's and my brief review of the disclosure statement and plan to date, I am willing to approve the disclosure statement, as well, to allow solicitation to proceed.

Did I understand, Mr. Lauria, are you going to submit a further revision?

MR. LAURIA: Your Honor, I believe there are a few minor cleanups that were mentioned, so we'll get that to the Court promptly and make sure that everybody has the changed pages tonight. I think it will be very minor. They're very limited.

THE COURT: All right. Oh, good.

And you'll file it under certification of counsel and be sure to upload it so that I can direct the entry of it.

I had one issue on the rate-offering procedures, and I don't know -- but I did not see any change to it -- paragraph 11 says that rights are governed by the EPCA if a DIP from the (indiscernible) of the order or attached procedures and subscription form.

And I think that rather than that, I would prefer that the order actually govern if there's any changes, because I do not expect parties to read the entire EPCA when they're getting a notice and procedures and form of order that say one thing.

MR. LAURIA: We'll make that change, Your Honor.

THE COURT: All right. But that was my only comment on that motion.

All right. If you can do a certification of counsel and upload the three orders or -- yeah, there are two separate orders on here, on the EPCA, if you can submit it

under certification of counsel, so we know which one is the final, I'll sign it.

MR. LAURIA: We will do so.

THE COURT: All right. And I don't want the parties to stop talking. Go forward and continue to do what you apparently have been doing for the last week, at least. All right.

MR. LAURIA: Well, we might take a nap somewhere, Your Honor, but ...

(Laughter)

THE COURT: I understand.

All right. Well, I think that's all I have for today and we'll stand adjourned, then.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 2:56 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajaczkowski April 21, 2021
Mary Zajaczkowski, CET**D-531

/s/William J. Garling April 21, 2021
William J. Garling, CE/T 543

/s/ Tracey J. Williams April 21, 2021
Tracey J. Williams, CET-914